

EXHIBIT 121

DEPOSITION

EXHIBIT 28

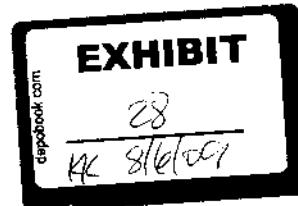
From: Lillian Raben
Sent: Wednesday, September 17, 2008 4:48 PM
To: archie.cox@barclayscapital.com; sberkenf@lehman.com; mark.shapiro@lehman.com; michaelklein@michaelklein.com; michaelklein@mail.com; michael.lubowitz@weil.com; thomas.roberts@weil.com; david.murgio@weil.com; robert.messineo@weil.com; jfinley@stblaw.com; ecooper@stblaw.com
Cc: Victor I LEWKOW; David LEINWAND; Duane MCLAUGHLIN
Subject: Draft of Letter
Attach: 1949604_2(Clarifying Letter under APA).DOC

Attached please find a draft of the clarification letter for your review and comments. Please note that in the interest of time we are circulating this draft simultaneously to our client, and it remains subject to their review and comment.

Best regards,

Lillian

Lillian Raben
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza, New York NY 10006
t: +1 212 225 2347 | f: +1 212 225 3999
www.clearygottlieb.com | lraben@cgsh.com



CGSH Draft - September 17, 2008

[Letterhead of Barclays]

September 17, 2008

Lehman Brothers Holdings Inc.
Lehman Brothers Inc.
LB 745 LLC
Attn: Steven Berkenfeld, Esq.
Facsimile: (646) 758-4226

Ladies and Gentlemen:

Reference is made to the Asset Purchase Agreement, dated as of September 16, 2008 (the “Agreement”), by and among Lehman Brothers Holdings Inc. (“LBHI”), Lehman Brothers Inc. (“LBI”), LB 745 LLC (“745”) and Barclays Capital Inc. (“Purchaser”). Each capitalized term used and not defined herein shall have the meaning ascribed to it in the Agreement. This letter agreement clarifies the meaning of certain provisions of the Agreement and is binding on the parties hereto upon its execution and delivery.

1. Business. The Purchased Assets will include the equity in (or, at the option of Purchaser, the assets of) the direct or indirect Canadian subsidiary of LBHI that holds the broker-dealer license for the Canadian operations of the Business.

2. License. With respect to the investment banking and capital markets businesses of Seller and its Subsidiaries conducted outside the United States and Canada (but without limiting the term of the license granted with respect to the IMD Business), the license to use the Licensed Marks granted pursuant to Section 8.9 is limited to a term of 2 years from the Closing Date. The licenses pursuant to Section 8.9 are not assignable or sublicensable (provided that such licenses are assignable and sublicensable to the extent expressly stated in Section 8.9 with respect to the IMD Business).

3. Long Positions. The Long Positions that are part of Purchased Assets include any proceeds from such Long Positions, any transfer, sale or disposition thereof or any assets purchased therewith (which shall be cash or cash equivalents or similar type of assets), as well as any derivative, swap, hedge, repo or similar arrangement in respect of any such Long Position and any proceeds from such derivative, swap, hedge, repo or arrangement. The Purchased Assets and Assumed Liabilities include hedges placed on the Long Positions that are entered into after the date of the Agreement and before Closing, but will not include any other types of hedges or derivatives. The reference to “government securities” in the definition of Long Positions includes securities of any government agency.

4. Subordinated Notes of LBI. The outstanding subordinated notes of LBI and the proceeds thereof are not Assumed Liabilities or Purchased Assets, and any Liabilities associated with such subordinated notes therefore are Excluded Liabilities.

5. Residential Real Estate Mortgage Securities. To facilitate the 50% split of residential real estate mortgage securities referred to in clause (e) of the definition of Purchased Assets and clause (k) of the definition of Excluded Assets, Purchaser will acquire non-agency residential mortgage backed securities (which are therefore considered Purchased Assets) and Seller will retain ABS, CDO, CLO, VFN, franchise loan, student loan, scratch and dent, second lien, and reverse mortgage backed securities (which are therefore considered Excluded Assets), in each case as will be further allocated by the parties.

6. Derivatives Business. [Note to B: We do not believe clarification is needed regarding what is included and not included in clause (l) of the definition of Excluded Assets and clause (d) of the definition of Purchased Assets (including after the clarification in paragraph 2 above), except as to any OTC derivatives (non-exchange traded derivatives) that are to be included within the Long Position, but Barclays to advise.]

7. Breakup Fee. 745 is jointly and severally liable with LBHI and LBI for Seller's obligations under the Agreement to pay the Breakup Fee and Expense Reimbursement (each of which has the meaning ascribed to it in the Breakup Fee and Competing Bid Order). [Do we need a more extensive and formal guarantee provision?]

8. Retained Cash. The amount of \$1.3 billion in clause (b) of "Excluded Assets" is \$700 million.

This letter agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within that state. This letter agreement may be executed in any number of counterparts (including by facsimile), each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

[Remainder of page intentionally left blank.]

Sincerely,

BARCLAYS CAPITAL INC.

By: _____
Name:
Title:

Agreed to and accepted as of the date first written above:

LEHMAN BROTHERS HOLDINGS INC.

By: _____
Name:
Title:

LEHMAN BROTHERS INC.

By: _____
Name:
Title:

LB 745 LLC

By: _____
Name:
Title:

Signature Page to Amendment 1 to
Asset Purchase Agreement

CONFIDENTIAL

BCI-CG00011050

DEPOSITION

EXHIBIT 29

MIME-Version: 1.0
Date: Tue, 24 Mar 2009 21:43:27 -0500
Content-Type: text/html; charset="windows-1252"
Content-Transfer-Encoding: quoted-printable

From: david.murgio@weil.com [david.murgio@weil.com]

:

Sent: Thursday, September 18, 2008 4:45 AM (GMT)

To: Berkenfeld, Steven [sberkent@lehman.com]

Cc: jfinley@stblaw.com [jfinley@stblaw.com]; robert.messineo@weil.com
[robert.messineo@weil.com]; michael.lubowitz@weil.com
[michael.lubowitz@weil.com]; jane.mcdonald@weil.com
[jane.mcdonald@weil.com]; Naomi.Munz@weil.com [Naomi.Munz@weil.com];
rod.miller@weil.com [rod.miller@weil.com]

Subj: Fw: Comments to Clarification Letter
ect:

Attac Clarification Letter_#1916861.DOC;Clarification Letter_#1916861.DOC
h:

Steve-

REDACTED

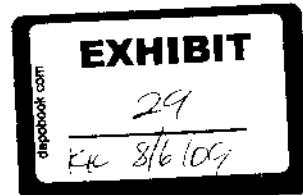
Regards,

David

David Murgio
Weil, Gotshal & Manges LLP
787 Fifth Avenue
New York, New York 10153
Tel: (212) 310 8764
Fax: (212) 310 8007
e-mail: david.murgio@weil.com

----- Forwarded by David Murgio/NY/WGM/US on 09/18/2008 12:37 AM -----

David Murgio/NY/WGM/US



10284821

09/18/2008 12:26 AM

To

LRaben@cgsh.com

cc

dleinwand@cgsh.com, dmclaughlin@cgsh.com, ecooper@stblaw.com, jfinley@stblaw.com,
vlewkow@cgsh.com, michael.lubowitz@weil.com, robert.messineo@weil.com, Jane
McDonald/NY/WGM/US@WGM, Naomi Munz/NY/WGM/US@WGM, Thomas
Roberts/NY/WGM/US@WGM

Subject

Comments to Clarification Letter link

<Notes://DB0100/7E70C70DE15/32547D7F39F9E7E38625613200556E//DB082342170350A6852674C/
0072660E>

Lillian-

Please find attached our preliminary comments to the Clarification Letter. Please note that our client has not reviewed this and, therefore, it is subject to any comments they may have.

Regards,

David

David Murgio
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Tel: (212) 310 8764
Fax: (212) 310 8007
e-mail: david.murgio@weil.com

10284821

WGM Comments – September 17, 2008

[Letterhead of Barclays]

September 17, 2008

Lehman Brothers Holdings Inc.
Lehman Brothers Inc.
LB 745 LLC
Attn: Steven Berkenfeld, Esq.
Facsimile: (646) 758-4226

Ladies and Gentlemen:

Reference is made to the Asset Purchase Agreement, dated as of September 16, 2008 (the “Agreement”), by and among Lehman Brothers Holdings Inc. (“LBI”), Lehman Brothers Inc. (“LB”), LB 745 LLC (“745”) and Barclays Capital Inc. (“Purchaser”). Each capitalized term used and not defined herein shall have the meaning ascribed to it in the Agreement. This letter agreement clarifies the intention of the parties with respect to certain provisions of the Agreement and is binding on the parties hereto upon its execution and delivery.

1. Purchased Assets. Included in the Purchased Assets is the equity of Lehman Brothers Canada, Inc.

2. IMD Business. Included in the IMD Business is the asset management business, the alternatives – private equity business and the private investment management business.

3. Excluded Assets. Included in the Excluded Assets are the mortgage servicing rights for Ginnie Mae guaranteed securities.

4. License. The license to use the Licensed Marks granted pursuant to Section 8.9 of the Agreement with respect to the investment banking and capital markets businesses of Seller and its Subsidiaries is limited to a term of 2 years from the Closing Date (without limiting the term of the license granted for use in connection with the IMD Business (including in respect of investment funds) or the unwinding of any operations or businesses of Seller or any of its Subsidiaries). The licenses pursuant to Section 8.9 are not assignable or sublicensable, except that such licenses are assignable and sublicensable to the extent expressly stated in Section 8.9 with respect to the IMD Business.

5. Long Positions. The Long Positions that are part of Purchased Assets include any proceeds from such Long Positions, including proceeds resulting from any transfer, sale or disposition thereof or any assets purchased therewith, as well as proceeds of or from any derivative, swap, hedge, repo or similar arrangement in respect of any such Long Position (whether, in each case, such proceeds are in the form of cash, cash equivalents or similar type of

assets). The Purchased Assets and Assumed Liabilities include hedges placed on the Long Positions that are entered into after the date of the Agreement and before Closing, but will not include any other types of hedges or derivatives. The reference to "government securities" in the definition of Long Positions includes securities of any government agency.

6. Subordinated Notes of LBI. The outstanding subordinated notes of LBI and the proceeds thereof are not Assumed Liabilities or Purchased Assets, and any Liabilities associated with such subordinated notes therefore are Excluded Liabilities.

7. [Residential Real Estate Mortgage Securities]. To facilitate the 50% split of residential real estate mortgage securities referred to in clause (e) of the definition of Purchased Assets and clause (k) of the definition of Excluded Assets, Purchaser will acquire non-agency residential mortgage backed securities (which are therefore considered Purchased Assets) and Seller will retain ABS, CDO, CLO, VFN, franchise loan, student loan, scratch and dent, second lien, and reverse mortgage backed securities (which are therefore considered Excluded Assets), in each case as will be further allocated by the parties.]

8. Breakup Fee. 745 is jointly and severally liable with LBHI and LBI for Seller's obligations under the Agreement to pay the Breakup Fee and Expense Reimbursement (each of which has the meaning ascribed to it in the Breakup Fee and Competing Bid Order).

9. Retained Cash. The amount of \$1.3 billion in clause (b) of "Excluded Assets" is \$700 million.

This letter agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within that state. This letter agreement may be executed in any number of counterparts (including by facsimile), each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

[Remainder of page intentionally left blank.]

Sincerely,

BARCLAYS CAPITAL INC.

By: _____
Name:
Title:

Agreed to and accepted as of the date first written above:

LEHMAN BROTHERS HOLDINGS INC.

By: _____
Name:
Title:

LEHMAN BROTHERS INC.

By: _____
Name:
Title:

LB 745 LLC

By: _____
Name:
Title:

CGSH Draft WGM Comments - September 17, 2008

[Letterhead of Barclays]

September 17, 2008

Lehman Brothers Holdings Inc.
Lehman Brothers Inc.
LB 745 LLC
Attn: Steven Berkenfeld, Esq.
Facsimile: (646) 758-4276

Ladies and Gentlemen:

Reference is made to the Asset Purchase Agreement, dated as of September 16, 2008 (the "Agreement"), by and among Lehman Brothers Holdings Inc. ("LBHI"), Lehman Brothers Inc. ("LBFI"), LB 745 LLC ("745") and Barclays Capital Inc. ("Purchaser"). Each capitalized term used and not defined herein shall have the meaning ascribed to it in the Agreement. This letter agreement clarifies the meaning of intention of the parties with respect to certain provisions of the Agreement and is binding on the parties hereto upon its execution and delivery.

1. Business. The Purchased Assets will include the equity in (or, at the option of Purchaser, the assets of) the direct or indirect Canadian subsidiary of LBHI that holds the broker-dealer license for the Canadian operations of the Business.

1. Purchased Assets. Included in the Purchased Assets is the equity of Lehman Brothers Canada, Inc.

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3. Excluded Assets. Included in the Excluded Assets are the mortgage servicing rights for Ginnie Mae guaranteed securities.

4. License. With the license to use the Licensed Marks granted pursuant to Section 8.9 of the Agreement with respect to the investment banking and capital markets businesses of Seller and its Subsidiaries conducted outside the United States and Canada (but without limiting the term of the license granted with respect to the IMD Business), the license to use the Licensed Marks granted pursuant to Section 8.9 is limited to a term of 2 years from the Closing Date (without limiting the term of the license granted for use in connection with the IMD Business (including in respect of investment funds) or the unwinding of any operations of businesses of Seller or any of its Subsidiaries). The licenses pursuant to Section 8.9 are not assignable or sublicensable (provided, except that such licenses are assignable and sublicensable to the extent expressly stated in Section 8.9 with respect to the IMD Business).

3-5. Long Positions. The Long Positions that are part of Purchased Assets include any proceeds from such Long Positions, including proceeds resulting from any transfer, sale or disposition thereof or any assets purchased therewith (which shall be cash or cash equivalents or similar type of assets), as well as proceeds of or from any derivative, swap, hedge, repo or similar arrangement in respect of any such Long Position and any proceeds from such derivative, swap, hedge, repo or arrangement (whether in each case such proceeds are in the form of cash, cash equivalents or similar type of assets). The Purchased Assets and Assumed Liabilities include hedges placed on the Long Positions that are entered into after the date of the Agreement and before Closing, but will not include any other types of hedges or derivatives. The reference to "government securities" in the definition of Long Positions includes securities of any government agency.

4-6. Subordinated Notes of LBI. The outstanding subordinated notes of LBI and the proceeds thereof are not Assumed Liabilities or Purchased Assets, and any Liabilities associated with such subordinated notes therefore are Excluded Liabilities.

5. 7. [Residential Real Estate Mortgage Securities.] To facilitate the 50% split of residential real estate mortgage securities referred to in clause (e) of the definition of Purchased Assets and clause (k) of the definition of Excluded Assets, Purchaser will acquire non-agency residential mortgage backed securities (which are therefore considered Purchased Assets) and Seller will retain ABS, CDO, CLO, VFN, franchise loan, student loan, scratch and dent, second lien, and reverse mortgage backed securities (which are therefore considered Excluded Assets), in each case as will be further allocated by the parties. 6. Derivatives Business. [Note to B: We do not believe clarification is needed regarding what is included and not included in clause (f) of the definition of Excluded Assets and clause (d) of the definition of Purchased Assets (including after the clarification in paragraph 2 above), except as to any OTC derivatives (non-exchange traded derivatives) that are to be included within the Long Position; but Barclays to advise.]

7-8. Breakup Fee. 745 is jointly and severally liable with LBHI and LBI for Seller's obligations under the Agreement to pay the Breakup Fee and Expense Reimbursement (each of which has the meaning ascribed to it in the Breakup Fee and Competing Bid Order). [Do we need a more extensive and formal guarantee provision?]

8-9. Retained Cash. The amount of \$1.3 billion in clause (b) of "Excluded Assets" is \$700 million.

This letter agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within that state. This letter agreement may be executed in any number of counterparts (including by facsimile), each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

[Remainder of page intentionally left blank.]

Sincerely,

BARCLAYS CAPITAL INC.

By: _____
Name:
Title:

Agreed to and accepted as of the date first written above:

LEHMAN BROTHERS HOLDINGS INC.

By: _____
Name:
Title:

LEHMAN BROTHERS INC.

By: _____
Name:
Title:

LB 745 LLC

By: _____
Name:
Title:

Document comparison done by DeltaView on Thursday, September 18, 2008 12:16:27
AM

Input:	
Document 1	pcdocs://ny2/1916861/1
Document 2	pcdocs://ny2/1916861/2
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	22
Deletions	20
Moved from	3
Moved to	3
Style change	0
Format changed	0
Total changes	48

DEPOSITION

EXHIBIT 30

From: Keller, Andy R [akeller@stblaw.com]. Sent: 9/18/2008 6:43 PM.
To: Berkenfeld, Steven [sberkenf@lehman.com].
Cc: .
Bcc: .
Subject: FW: REVISED Clarification Letter.

From: Dowd, Patrick M
Sent: Thursday, September 18, 2008 2:49 PM
To: Keller, Andy R; Ericson, John C; Chisling, Brian; Finley, John G; Geller, Marcy G; Brown, Alvin H; Lewandowski, Edgar
Cc: Martelli, Peter
Subject: FW: REVISED Clarification Letter

Revised Clarification Letter from Cleary.

From: Martelli, Peter
Sent: Thursday, September 18, 2008 2:46 PM
To: Dowd, Patrick M
Subject: FW: REVISED Clarification Letter

Can you get this around to the entire team.

From: Cooper, Elizabeth A
Sent: Thursday, September 18, 2008 2:42 PM
To: Martelli, Peter
Subject: FW: REVISED Clarification Letter



From: David LEINWAND [mailto:dleinwand@cgsb.com]
Sent: Thursday, September 18, 2008 2:39 PM
To: david.murgio@weil.com; Cooper, Elizabeth A; janie.mcdonald@weil.com; Finley, John G; michael.lubowitz@weil.com; Naomi.Munz@weil.com; robert.messineo@weil.com; thomas.roberts@weil.com; archie.cox@barclayscapital.com; richard.smith3@barcap.com; iain.mackinnon@barcap.com; jonathan.hughes@barclayscapital.com
Cc: Duane MC LAUGHLIN; Edward J ROSEN; Lisa M SCHWEITZER; Robert P DAVIS; Dana G FLEISCHMAN; James A DUNCAN; Corey M Goodman; Elena V Romanova; Lillian Raben; Esther Farkas; Lindsey GRANFIELD; Victor I LEWKOW
Subject: REVISED Clarification Letter

Attached for your review is a revised version of the clarification letter. The marked copy reflects changes made to the WGM draft of September 17. Please note that this draft currently is being reviewed internally at:

CGSH; has not yet been reviewed by Barclays and is subject to further change.

David Leinwand
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza, New York NY 10006
t: +1 212 225 2838 | f: +1 212 225 3999
<<http://www.clearygottlieb.com>> www.clearygottlieb.com | <mailto: dleinwand@cgsh.com>
dleinwand@cgsh.com

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confidential or privileged information. If you are not
the intended recipient, please advise the sender
immediately by reply e-mail and delete this message and
any attachments without retaining a copy.

WGMCGSH Comments - September 17, 18, 2008 (230pm)

[*Letterhead of Barclays*]

September 17, 18, 2008

Lehman Brothers Holdings Inc.
Lehman Brothers Inc.
LB 745 LLC
Attn: Steven Berkenfeld, Esq.
Facsimile: (646) 758-4226

Ladies and Gentlemen:

Reference is made to the Asset Purchase Agreement, dated as of September 16, 2008 (the "Agreement"), by and among Lehman Brothers Holdings Inc. ("LBI" or "Holdings"), Lehman Brothers Inc. ("LBI"), LB 745 LLC ("745") and Barclays Capital Inc. ("Purchaser"). Each capitalized term used and not defined herein shall have the meaning ascribed to it in the Agreement. This letter agreement clarifies the intention of the parties with respect to certain provisions of the Agreement and is binding on the parties hereto upon its execution and delivery.

1. Purchased Assets. Included in the Purchased Assets is the equity of Lehman Brothers Canada, Inc.

2. IMD Business. Included in the IMD Business is the asset management business, the alternatives – private equity business and the private investment management business. [To be confirmed by Barclays]

3. Excluded Assets. Included in the Excluded Assets are the Certain Government Securities. The mortgage servicing rights for Ginnie Mae guaranteed securities shall be Excluded Assets. Purchased Assets shall include the government securities trading and mortgage trading operations of the LBI (but mortgage securities only to the extent referred to below).

4. Purchased Assets and Assumed Liabilities. Other than assets purchased directly from LBI and 745 pursuant to the terms of the Agreement, the only assets of Holdings or Subsidiaries of Seller that shall constitute Purchased Assets are assets of Holdings or such Subsidiaries to the extent used in the conduct of the Business as the Business was conducted on the date of the Agreement, and in no event shall Purchased Assets include any financial assets of Holdings or such Subsidiaries. Other than liabilities of LBI and 745 that are assumed by Purchaser directly from LBI or 745 pursuant to the terms of the Agreement, no liabilities of Holdings or any Subsidiary of Seller shall constitute Assumed Liabilities, except to the extent such liabilities arise directly from a Purchased Asset, and in no event shall any financial liabilities of Holdings or such

Subsidiaries constitute Assumed Liabilities. Any liability that is not expressly assumed pursuant to the terms of the Agreement, shall constitute an Excluded Liability.

5. License. The license to use the Licensed Marks granted pursuant to Section 8.9 of the Agreement with respect to the investment banking and capital markets businesses of Seller and its Subsidiaries is limited to a term of 2 years from the Closing Date (without limiting the term of the license granted for use in connection with the IMD Business (including in respect of investment funds) or the unwinding of any operations or businesses of Seller or any of its Subsidiaries). The licenses pursuant to Section 8.9 are not assignable or sublicensable, except that such licenses are assignable and sublicensable to the extent expressly stated in Section 8.9 with respect to the IMD Business.

5. Long Positions. **Financial Assets and Liabilities.** The Long Positions that are part of Purchased Assets include any proceeds from such Long Positions, including proceeds resulting from any transfer, sale or disposition thereof or any assets purchased therewith, as well as proceeds of or from any derivative, swap, hedge, repo or similar arrangement in respect of any such Long Position (whether, in each case, such proceeds are in the form of cash, cash equivalents or similar type of assets). The Purchased Assets and Assumed Liabilities include hedges placed on the Long Positions that are entered into after the date of the Agreement and before Closing, but will not include any other types of hedges or derivatives (**except exchange-traded derivatives as contemplated by the Agreement and this letter.**) The reference to "government securities" in the definition of Long Positions includes securities of any government agency. **Subject to Section 8 below, the only financial assets that shall constitute Purchased Assets are the financial assets reflected on Exhibit A, and the only financial liabilities that shall constitute Assumed Liabilities are the liabilities set forth on Exhibit A. It is acknowledged that the values of assets set forth on Exhibit A reflect Seller's marks as of the date and time set forth on Exhibit A and that the face and nominal amount of such assets may be different than such marks.**

6.7. Subordinated Notes of LBI. The outstanding subordinated notes of LBI and the proceeds thereof are not Assumed Liabilities or Purchased Assets, and any Liabilities associated with such subordinated notes therefore are Excluded Liabilities.

7. [8. Residential Real Estate Mortgage Securities. To facilitate the 50% split of residential real estate mortgage securities referred to in clause (e) of the definition of Purchased Assets and clause (k) of the definition of Excluded Assets, Purchaser will acquire non-agency residential mortgage backed securities (which are therefore considered Purchased Assets) and Seller will retain ABS, CDO, CLO, VFN, franchise loan, student loan, scratch and dent, second lien, and reverse mortgage backed securities (which are therefore considered Excluded Assets), in each case as will be further allocated by the parties. **Agreement of the parties. Any further allocation of such assets agreed to by the parties pursuant to this Section 8 shall be deemed to be an amendment to Exhibit A.**

8.9. Breakup Fee. 745 is jointly and severally liable with LBHI and LBI for Seller's obligations under the Agreement to pay the Breakup Fee and Expense Reimbursement (each of which has the meaning ascribed to it in the Breakup Fee and Competing Bid Order).

9. Retained Cash. The amount of \$1.3 billion in clause (b) of "Excluded Assets" is \$700 million. 10. Retained Cash. "Retained Cash" as referred to in the Agreement is meant to refer to the cash, cash equivalents and bank deposits that are being acquired by Purchaser as Purchased Assets. Retained Cash shall be in the amount of \$700 million (not \$1.3 billion) and shall be adjusted as contemplated by Section 6 above.

11. Derivatives. It is acknowledged and agreed that the exchange-traded derivatives reflected on Exhibit A shall be Purchased Assets and no over-the-counter derivatives shall be Purchased Assets.

12. Intercompany Obligations. Except as expressly contemplated by the Agreement or Section 4 above with respect to assets used in the conduct of the Business, Purchased Assets and Assumed Liabilities shall not include any intercompany receivables or payables of Seller and its Subsidiaries.

13. Certain Assets and Obligations. The Sale shall include all prime brokerage accounts and securities lending operations of the Business. The Sale shall include all repo agreements reflected on Exhibit A. All customer accounts shall be transferred to the Purchaser at Closing and no such accounts shall be liquidated in the Sale.

14. Eagle. The reference to "Eagle Energy Management LLC" in clause (p) of "Purchased Assets" is instead a reference to "Eagle Energy Partners I L.P." Any liabilities or obligations of Eagle Energy Partners I L.P. or any of its Subsidiaries to LEH or any of its Subsidiaries are Excluded Liabilities within Section 2.4(g) of the Agreement and, upon the occurrence of the Closing, any and all such obligations shall no longer be due and payable and shall be forgiven in their entirety. Purchaser shall have the right, prior to the occurrence of the Closing, by delivery of a written notice to Seller, to not acquire Eagle Energy Partners I L.P., in which case it shall be an Excluded Asset.

This letter agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within that state. This letter agreement may be executed in any number of counterparts (including by facsimile), each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

[Remainder of page intentionally left blank.]

Sincerely,

BARCLAYS CAPITAL INC.

By: _____

Name:

Title:

Agreed to and accepted as of the date first written above:

LEHMAN BROTHERS HOLDINGS INC.

By: _____

Name:

Title:

LEHMAN BROTHERS INC.

By: _____

Name:

Title:

LB 745 LLC

By: _____

Name:

Title:

DEPOSITION

EXHIBIT 31

Unknown

Sent: Tuesday, March 24, 2009 10:43 PM

From: david.murgio@weil.com [david.murgio@weil.com]
Sent: Thursday, September 18, 2008 11:40 PM (GMT)
To: vlewkow@cgsh.com [vlewkow@cgsh.com]; dleinwand@cgsh.com
[dleinwand@cgsh.com]
Cc: jfinley@stblaw.com [jfinley@stblaw.com]; akeller@stblaw.com [akeller@stblaw.com];
Berkenfeld, Steven [sberkenf@lehman.com]; michael.lubowitz@weil.com
[michael.lubowitz@weil.com]; robert.messineo@weil.com [robert.messinco@weil.com];
thomas.roberts@weil.com [thomas.roberts@weil.com]
Subject: REVISEd Clarification Letter
Attach: Clarification Letter #1916861.DOC

Please find attached a draft Clarification Letter for us to discuss at our call. As you will see, we have incorporated some of the items you suggested, but not all.

Also, we would like to push back our call to 8:45, rather than 8:30.

Please use the following call-in info.

1-800-782-1473
Code: 6077339

Lastly, if you could distribute this to your team internally, I would appreciate it.

Thanks,

David

David Murgio
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153Link <Notes://852567E70070DE15>
Tel: (212) 310 8764
Fax: (212) 310 8007
e-mail: david.murgio@weil.com



WGM Comments September 18, 2008 7:30 pm

[Letterhead of Barclays]

September [__], 2008

Lehman Brothers Holdings Inc.
Lehman Brothers Inc.
LB 745 LLC
Attn: Steven Berkenfeld, Esq
Facsimile: (646) 758-4226

Ladies and Gentlemen:

Reference is made to the Asset Purchase Agreement, dated as of September 16, 2008 (the "Agreement"), by and among Lehman Brothers Holdings Inc. ("LBHI"), Lehman Brothers Inc. ("LBI"), LB 745 LLC ("745") and Barclays Capital Inc. ("Purchaser"). Each capitalized term used and not defined herein shall have the meaning ascribed to it in the Agreement. This letter agreement clarifies the intention of the parties with respect to certain provisions of the Agreement and is binding on the parties hereto upon its execution and delivery.

1. Purchased Assets. The Purchased Assets means all of the assets of Seller used in connection of the Business (excluding the Excluded Assets), including the items set forth in clauses (a) through (s). Also included in the Purchased Assets are (a) the equity of Lehman Brothers Canada, Inc. and (b) the government securities trading and mortgage trading operations of LBI (but mortgage securities only to the extent referred to below).

2. IMD Business. Included in the IMD Business is the asset management business, the alternatives private equity business and the private investment management business.

3. Excluded Assets. Included in the Excluded Assets are the mortgage servicing rights for Ginnie Mae guaranteed securities. Included in clause (h) of the definition of "Excluded Assets" are life insurance policies owned by Seller and its Subsidiaries.

4. License. All marks containing the words "LEHMAN" or "LEHMAN BROTHERS" assigned under the Agreement shall be considered Licensed Marks under Section 8.9 of the Agreement. [The license to use the Licensed Marks granted pursuant to Section 8.9 of the Agreement with respect to the investment banking and capital markets businesses of Seller and its Subsidiaries is limited to a term of 2 years from the Closing Date (without limiting the term of the license granted for use in connection with the IMD Business (including in respect of investment funds) or the unwinding of any operations or businesses of Seller or any of its Subsidiaries).] The licenses pursuant to Section 8.9 are not assignable or sublicensable, except that such licenses are assignable and sublicensable (i) for use in connection with IMD Business or any portion of the IMD Business, (ii) to Seller's Subsidiaries and (iii) to the purchaser of any

other businesses of Seller and its Subsidiaries solely in connection with the continued operations and/or unwinding of such businesses.

5. Long Positions. The Purchased Assets and Assumed Liabilities include hedges placed on the Long Positions that are entered into after the date of the Agreement and before Closing, but will not include any other types of hedges or derivatives. The reference to "government securities" in the definition of Long Positions includes securities of any government agency.

6. Subordinated Notes of LBI. The outstanding subordinated notes of LBI and the proceeds thereof are not Assumed Liabilities or Purchased Assets, and any Liabilities associated with such subordinated notes therefore are Excluded Liabilities.

7. [Residential Real Estate Mortgage Securities] To facilitate the 50% split of residential real estate mortgage securities referred to in clause (e) of the definition of Purchased Assets and clause (k) of the definition of Excluded Assets, Purchaser will acquire non-agency residential mortgage backed securities (which are therefore considered Purchased Assets) and Seller will retain ABS, CDO, CLO, VFN, franchise loan, student loan, scratch and dent, second lien, and reverse mortgage backed securities (which are therefore considered Excluded Assets), in each case as will be further allocated by the parties.]

8. Breakup Fee. T45 is jointly and severally liable with LBHI and LBI for Seller's obligations under the Agreement to pay the Breakup Fee and Expense Reimbursement (each of which has the meaning ascribed to it in the Breakup Fee and Competing Bid Order).

9. Excluded Cash Assets and Retained Cash. All cash, cash equivalents, bank deposits or similar cash items of Seller and its Subsidiaries are Excluded Assets, other than the "Retained Cash," which is a Purchased Asset. The "Retained Cash" is \$700 million in cash, cash equivalents, bank deposits or similar cash items (rather than \$1.3 billion), plus the cash amount received from closing out Long Positions, less the cash amount expended to close out Short Positions.

10. 9/16/08 Balance Sheet. Included in "Excluded Assets" are all of the categories of assets valued at "0" on the balance sheet printed at 11:18 AM on 9/16/08 and initialed "SB," which was previously provided to Purchaser. (such balance sheet, the "9/16/08 Balance Sheet"). Included in "Excluded Liabilities" are all of the categories of liabilities valued at "0" on the 9/16/08 Balance Sheet.

11. [Derivatives. It is acknowledged and agreed that the exchange-traded derivatives reflected on Exhibit A shall be Purchased Assets and no over-the-counter derivatives shall be Purchased Assets.]

13. [Certain Assets and Obligations. The Sale shall include all prime brokerage accounts and securities lending operations of the Business, other than those that are part of the IMD Business. The Sale shall include all repo agreements reflected on Exhibit A. All customer accounts shall be transferred to the Purchaser at Closing and no such accounts shall be liquidated in the Sale.]

14. [Intercompany Obligations. Except as expressly contemplated by the Agreement for Section 4 above] with respect to assets used in the conduct of the Business, Purchased Assets and Assumed Liabilities shall not include any intercompany receivables or payables of Seller and its Subsidiaries.]

15. [Eagle Energy. Included in the Purchased Assets are the equity interests or assets (at the election of the Purchaser prior to the entry of the Sale Order) of Eagle Energy Partners I, L.P. (rather than Eagle Energy Management LLC), and the assets of the energy marketing and services business of Lehman Brothers Commodity Services, Inc.] [Purchaser shall have the right, prior to the Closing, by delivery of a written notice to Seller, not to acquire Eagle Energy Partners I, L.P. and the assets of the energy marketing and services business of Lehman Brothers Commodity Services, Inc.]

16. Schedule 12.3. All references to Schedule 12.3 are deleted.

17. [Schedule 9 1(c).]

18. Subleases. Notwithstanding anything to the contrary contained in Sections 4.2(d), 4.3(c), 8.14 or any other provision of the Agreement, with respect to the leased premises located in (i) 555 California Street, San Francisco, California ("SF Property"), (ii) 125 High Street, Boston, Massachusetts ("Boston Property"), (iii) 190 S. LaSalle Street, Chicago, Illinois ("Chicago Property"), and (iv) 10250 Constellation Boulevard, Los Angeles, California ("LA Property" and together with the SF Property, Boston Property and Chicago Property, the "Sublease Properties"), the parties agree as follows:

(a) As contemplated in the Agreement, on the Closing Date, (i) the underlying leases affecting the Chicago Property, the LA Property and the Boston Property shall be assumed by Seller in connection with the bankruptcy proceedings and each of such leases shall be assigned by Seller to Purchaser and Purchaser shall assume all of Seller's obligations thereunder pursuant to assignment and assumption agreements mutually acceptable to Seller and Purchaser, and (ii) the underlying lease affecting the SF Property shall be assumed by Seller in connection with the bankruptcy proceedings.

(b) With respect to each Sublease Property, Seller and Purchaser shall, within a commercially reasonable period of time following the Closing Date, negotiate in good faith, and thereafter execute and deliver, a sublease agreement reasonably acceptable to both Purchaser and Seller and subject to the terms of the applicable underlying lease, pursuant to which a portion of the demised premises under such underlying lease (such portion of the premises to be agreed upon by the parties) shall be subleased to (A) with respect to the SF Property, the Purchaser, and (B) with respect to the LA Property, Chicago Property and Boston Property, the Seller (regardless of the creditworthiness of Seller) or any person who purchases the IMD Business (provided that the entity entering into the sublease agreement as a subtenant shall be reasonably acceptable to the Purchaser) (the landlord under such sublease being referred to as the "Sublandlord" and the tenant under such sublease being referred to as the "Subtenant"), in each case, upon such terms as shall be mutually acceptable to the Sublandlord and Subtenant provided that (1) the Subtenant shall pay rent and other charges under such sublease agreement

equal to its proportionate share of the rent and other charges payable by the Sublandlord to the landlord under the underlying lease (which proportionate share shall be based upon the relative square footage of the subleased space in proportion to the square footage of the overall demised space under the underlying lease), (2) the term of the sublease agreement shall be a period commencing on the Closing Date and ending on the day immediately preceding the expiration date of the underlying lease (as the same may be extended pursuant to the terms of the underlying lease), (3) any alterations or modifications which the Sublandlord and Subtenant mutually agree need to be made to the demised premises in order to segregate the subleased space from the remainder of the demised premises under the underlying lease shall be performed by the Sublandlord and the cost thereof (including the cost of any plans and specifications, drawings, permits, licenses, and other "soft" costs related thereto) shall be shared by the Sublandlord and Subtenant in proportion to the square footage of their respective spaces. Prior to the execution and delivery of the sublease agreement for a particular Sublease Property, subject to reasonable security procedures and giving due regard to regulatory considerations (e.g., segregation) including the right to relocate such employees within the applicable premises, and for a commercially reasonable period after the Closing Date, (i) with respect to the SF Property, to the extent that Transferred Employees occupied any portion of the SF Property prior to Closing, such Transferred Employees shall be permitted to continue to occupy and use the SF Property to the same extent and for the same purposes as the SF Property was occupied by such Transferred Employees prior to the Closing; provided, that the foregoing shall be subject to Purchaser's ability to substitute a substantially similar number of new employees of Purchaser for any such Transferred Employees as provided in Paragraph 11 below, and (ii) with respect to each Sublease Property other than the SF Property, to the extent that Excluded Employees occupied any portion of such Sublease Property prior to Closing, such Excluded Employees shall be permitted to continue to occupy and use such Sublease Property to the same extent and for the same purposes as such Sublease Property was occupied by such Excluded Employees prior to the Closing; provided, that the foregoing shall be subject to Seller's ability to substitute a substantially similar number of new employees of Seller for any such Excluded Employees as provided in Paragraph 11 below. In each case described in clauses (i) and (ii) above, no rent or other payments shall be made to the party which is the tenant under the underlying lease until execution and delivery of the applicable sublease agreement at which time all rent calculated under the sublease agreement for the period from the Commencement Date (which date shall be the Closing Date) through end of the month in which the sublease agreement is executed shall be paid to the Sublandlord contemporaneously with the execution and delivery of the sublease agreement.

(c) If any consent or approval from any landlord under an underlying lease is required pursuant to the terms of the underlying lease in order to effectuate the applicable sublease agreement and/or to the extent that any landlord under an underlying lease has recapture and/or termination rights that would be triggered by the proposed sublease arrangement to be reflected in the applicable sublease agreement, Seller and Purchaser will cooperate in obtaining such consent to the applicable sublease agreement and/or obtaining waivers from the landlord with respect to any such recapture and/or termination rights and shall otherwise comply in all respects with the terms and provisions of the

underlying lease in connection with the execution and delivery of the applicable sublease agreement.

19. Deferred Transfers. Notwithstanding anything to the contrary contained in the Agreement, (a) the parties agree that during the nine month period after the Closing Date that Excluded Employees are permitted to occupy and use real property subject to a Transferred Real Property Lease in accordance with Section 8.11(f) of the Agreement, that the Seller and its Affiliates shall also be permitted to substitute a substantially similar number of new employees of Seller or its Affiliates for any such Excluded Employees, and that any such new employees of Seller or its Affiliates shall be permitted to occupy and use such real property to the same extent and on the same basis as the Excluded Employees in accordance with Section 8.11(f), and (b) the parties agree that during the nine month period after the Closing Date that Transferred Employees are permitted to occupy and use real property is not subject to a Transferred Real Property Lease in accordance with Section 8.11(g) of the Agreement, that the Purchaser and its Affiliates shall also be permitted to substitute a substantially similar number of new employees of Purchaser or its Affiliates for any such Transferred Employees, and that any such new employees of Purchaser or its Affiliates shall be permitted to occupy and use such real property to the same extent and on the same basis as the Transferred Employees in accordance with Section 8.11(g).

20. 745 Seventh Avenue. The parties acknowledge that there is no mortgage encumbering 745's interest in the premises at 745 Seventh Avenue, New York, New York and that, notwithstanding Section 10.1(d) of the Agreement, only the \$500,000,000 promissory note made by 745 in favor of its Affiliate will be fully repaid and extinguished.

21. Prorations. Notwithstanding Section 12.2 of the Agreement, to the extent that the parties are unable to agree upon all prorations for the Purchased Assets as of the Closing, they shall cooperate in finalizing all such prorations within thirty (30) days following the Closing Date.

This letter agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within that state. This letter agreement may be executed in any number of counterparts (including by facsimile), each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

[Remainder of page intentionally left blank.]

Sincerely,

BARCLAYS CAPITAL INC.

By: _____

Name:

Title:

Agreed to and accepted as of the date first written above:

LEHMAN BROTHERS HOLDINGS INC.

By: _____

Name:

Title:

LEHMAN BROTHERS INC.

By: _____

Name:

Title:

LB 745 LLC

By: _____

Name:

Title:

DEPOSITION

EXHIBIT 32

From: Hughes, Jonathan: Legal (NYK)
Sent: Friday, September 19, 2008 7:14 AM
To: Ricci, Rich: Barclays Capital; Keegan, Mike : Barclays Capital; Clackson, Patrick: Finance (LDN); Mahon, John: Markets (LDN); King, Linda: GFRM (LDN); Cox, Archie: Barclays Capital (NYK)
Subject: FW: Clarifying Letter
Attachments: Clarification Letter_#1916861.DOC; Clarification Letter_#1916861.DOC; Real Estate Schedules_#1917608.XLS

Jonathan Hughes
Global General Counsel
Barclays Capital
Tel: + (1) 212 412 3519 or +44 (0)207 773 4154
Cell: + (1) 646 236 3129
Email: jonathan.hughes@barclayscapital.com

From: White, Jason: Legal (NYK)
Sent: Friday, September 19, 2008 7:09 AM
To: Hughes, Jonathan: Legal (NYK)
Subject: Fw: Clarifying Letter

From: Smith, Richard: Legal (NYK)
To: White, Jason: Legal (NYK); Weiner, Jessica: Legal (NYK); Kern-Martin, Guy: Legal (NYK); Jimenez, Emilio: Legal (NYK); Kaplan, Alan: Legal (NYK); 'serotad@sullcrom.com'
Sent: Fri Sep 19 06:40:20 2008
Subject: FW: Clarifying Letter

From: Victor I LEWKOW [mailto:vlewkow@cgsh.com]
Sent: Friday, September 19, 2008 6:16 AM
To: Smith, Richard: Legal (NYK)
Subject: Fw: Clarifying Letter

Victor Lewkow
Clearay Gottlieb Steen & Hamilton LLP
Tel: (212) 225-2370
Fax: (212) 225-3999



From: david.murgio
Sent: 09/19/2008 04:21 AM AST
To: Victor LEWKOW
Cc: akeller@stblaw.com; David LEINWAND; Duane MCLAUGHLIN; jfinley@stblaw.com; Robert DAVIS; lori.fife@weil.com;

michael.lubowitz@weil.com; robert.messineo@weil.com; David.Herman@weil.com
Subject: Re: Clarifying Letter

Sorry, I forgot to attached the corrected Schedules. My understanding is that these schedules merely correct a typo and (I believe) the Cleary real estate team has reviewed them.

Regards,

David

David Murgio
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Tel: (212) 310 8764
Fax: (212) 310 8007
e-mail: david.murgio@weil.com

David Murgio/NY/WGM/US

09/19/2008 03:36 AM

To viewkow@cash.com
cc deinwand@cash.com, dmclaughlin@cash.com, rdayls@cash.com,
finley@stblaw.com, akeller@stblaw.com, Robert Messineo/NY/WGM/US@WGM, Lori
Fife/NY/WGM/US@WGM, Michael Lubowitz/NY/WGM/US@WGM
Subject: Clarifying Letter [Link](#)

Please find attached the redraft of the Clarifying Letter.

Regards,

David Murgio
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Tel: (212) 310 8764
Fax: (212) 310 8007
e-mail: david.murgio@weil.com

This message is being sent from a law firm and may contain confidential or privileged information. If you are not the intended recipient, please advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy.

WGM Comments – September 19, 2008 – 2:30 am

[*Letterhead of Barclays*]

September [__], 2008

Lehman Brothers Holdings Inc.

Lehman Brothers Inc.

LB 745 LLC

Attn: Steven Berkenfeld, Esq.

Faxsimile: (646) 758 4726

Ladies and Gentlemen:

Reference is made to the Asset Purchase Agreement, dated as of September 16, 2008 (the “Agreement”), by and among Lehman Brothers Holdings Inc. (“LBHI”), Lehman Brothers Inc. (“LBI”), LB 745 LLC (“745”) and Barclays Capital Inc. (“Purchaser”). Each capitalized term used and not defined herein shall have the meaning ascribed to it in the Agreement. This letter agreement clarifies the intention of the parties with respect to certain provisions of the Agreement and is binding on the parties hereto upon its execution and delivery.

1. **Purchased Assets.** The Purchased Assets means all of the assets of Seller used in connection of the Business (excluding the Excluded Assets), including the items set forth in clauses (a) through (s) of the definition of “Purchased Assets.” Also included in the Purchased Assets are (a) the equity of Lehman Brothers Canada, Inc., Lehman Brothers Sudamerica SA and Lehman Brothers Uruguay SA, (b) the government securities trading and mortgage trading operations of LBI (but mortgage securities only to the extent referred to below) and (c) all prime brokerage accounts and securities lending operations of the Business (for the avoidance of doubt, other than those that are part of the IMD Business).

2. **IMD Business.** For purposes of this Agreement, the IMD Business consists of the asset management and the alternatives – private equity businesses of Seller and the Subsidiaries, but not the private investment management business of Seller and the Subsidiaries (other than the CTS (Corporate Cash) business. As a result, Excluded Assets include the asset management business, the alternatives-private equity business and the CTS (Corporate Cash) business and Purchased Assets include the private investment management business (other than the CTS (Corporate Cash) business). In connection with Section 9.1(c) of the Agreement, the Purchaser shall establish a retention program for certain employees of the private investment management business (other than the CTS (Corporate Cash) business).

3. **Excluded Assets.** Included in the Excluded Assets are (a) the mortgage servicing rights for Ginnie Mae guaranteed securities and (b) all assets and rights of the Lehman European entities in administration. Included in clause (h) of the definition of “Excluded Assets” are life insurance policies owned by Seller and its Subsidiaries. The reference to “third

parties" in clause (i) of the definition of "Excluded Assets" includes any person, including Affiliates of Seller.

4. Assumed Liabilities. Clause (a) of the definition of "Assumed Liabilities" consists of all Liabilities of Seller incurred by Purchaser, after the Closing, in connection with the Business. Nothing in this Paragraph 4 is intended to modify Section 8.12 of the Agreement.

5. License. All marks containing the words "LEHMAN" or "LEHMAN BROTHERS" assigned under the Agreement shall be considered Licensed Marks under Section 8.9 of the Agreement. The license to use the Licensed Marks granted pursuant to Section 8.9 of the Agreement with respect to the investment banking and capital markets businesses of Seller and its Subsidiaries is limited to a term of 2 years from the Closing Date (without limiting the term of the license granted for use in connection with the IMD Business (including in respect of investment funds) or the unwinding of any operations or businesses of Seller or any of its Subsidiaries). The licenses pursuant to Section 8.9 are not assignable or sublicensable, except that such licenses are assignable and sublicensable (i) for use in connection with IMD Business or any portion of the IMD Business, (ii) to Seller's Subsidiaries and (iii) to the purchaser of any other businesses of Seller and its Subsidiaries solely in connection with the winding up of any such businesses.

6. Long Positions. The Purchased Assets and Assumed Liabilities include hedges placed on the Long Positions that are entered into after the date of the Agreement and before Closing, but will not include any other types of hedges or derivatives (other than exchange-traded derivatives as specific in clause (d) of the definition of "Purchased Assets"). The reference to "government securities" in the definition of Long Positions includes securities of any government agency.

7. Subordinated Notes of LBI. The outstanding subordinated notes of LBI and the proceeds thereof are not Assumed Liabilities or Purchased Assets, and any Liabilities associated with such subordinated notes therefore are Excluded Liabilities.

8. [Residential Real Estate Mortgage Securities.] To facilitate the division of residential real estate mortgage securities referred to in clause (e) of the definition of Purchased Assets and clause (k) of the definition of Excluded Assets, Purchaser will acquire non-agency residential mortgage backed securities and manufactured housing securities (which are therefore considered Purchased Assets) and Seller will retain HELOC, ABS, CDO, CLO, VFN, franchise loan, student loan, [scratch and dent], second lien, and reverse mortgage backed securities (which are therefore considered Excluded Assets), in each case as will be further allocated by the parties.]

9. Breakup Fee. 745 is jointly and severally liable with LBHI and LBI for Seller's obligations under the Agreement to pay the Breakup Fee and Expense Reimbursement (each of which has the meaning ascribed to it in the Breakup Fee and Competing Bid Order).

10. Excluded Cash Assets and Retained Cash. All cash, cash equivalents, bank deposits or similar cash items of Seller and its Subsidiaries are Excluded Assets, other than the "Retained Cash," which is a Purchased Asset. The "Retained Cash" is \$700 million in cash, cash equivalents, bank deposits or similar cash items (rather than \$1.3 billion), plus the cash

amount received from closing out Long Positions, less the cash amount expended to close out Short Positions.

11. Payables, Deposits and Receivables. No payables or deposits shall be Assumed Liabilities, except to the extent relating to a Purchased Contract. No receivables shall be Purchased Assets, except to the extent relating to a Purchased Contract.

12. Intercompany Obligations. Except as expressly contemplated by this Letter, the Agreement or the Transition Services Agreement, Purchased Assets and Assumed Liabilities shall not include any intercompany receivables, payables or other obligations of Seller or its Subsidiaries.

13. Eagle Energy as Excluded Asset. The equity interests and assets of Eagle Energy Management LLC, including the assets of the energy marketing and services business of Lehman Brothers Commodity Services, Inc., are Excluded Assets (rather than Purchased Assets).

14. Schedule 12.3. Following the Closing, the parties shall reasonably agree to an allocation of the purchased price (including the Assumed Liabilities) among the Purchased Assets and set forth such allocation on a Schedule 12.3.

15. Risk of Loss of Artwork. During such period that Purchaser has the right to possess the artwork following the Closing pursuant to Section 8.16 of the Agreement, Purchaser shall bear the risk of loss for such artwork. In the event that any artwork is damaged or lost during such period, Purchaser shall pay to Seller an amount equal to the appraised value (as determined by an independent, recognized appraiser) for such artwork, assuming such artwork was not lost or damaged.

16. Records. The records referred to in Section 8.7 include all Documents that are Purchased Assets. The joint administrators of the Lehman European entities are parties to which records and personnel shall be made available in accordance with the terms of Section 8.7.

17. Subleases. Notwithstanding anything to the contrary contained in Sections 4.2(d), 4.3(c), 8.14 or any other provision of the Agreement, with respect to the leased premises located in (i) 555 California Street, San Francisco, California ("SF Property"), (ii) 125 High Street, Boston, Massachusetts ("Boston Property"), (iii) 190 S. LaSalle Street, Chicago, Illinois ("Chicago Property"), and (iv) 10250 Constellation Boulevard, Los Angeles, California ("LA Property" and together with the SF Property, Boston Property and Chicago Property, the "Sublease Properties"), the parties agree as follows:

(a) As contemplated in the Agreement, on the Closing Date, (i) the underlying leases affecting the Chicago Property, the LA Property and the Boston Property shall be assumed by Seller in connection with the bankruptcy proceedings and each of such leases shall be assigned by Seller to Purchaser and Purchaser shall assume all of Seller's obligations thereunder pursuant to assignment and assumption agreements mutually acceptable to Seller and Purchaser, and (ii) the underlying lease affecting the SF Property shall be assumed by Seller in connection with the bankruptcy proceedings.

(b) With respect to each Sublease Property, Seller and Purchaser shall, within

a commercially reasonable period of time following the Closing Date, negotiate in good faith, and thereafter execute and deliver, a sublease agreement reasonably acceptable to both Purchaser and Seller and subject to the terms of the applicable underlying lease, pursuant to which a portion of the demised premises under such underlying lease (such portion of the premises to be agreed upon by the parties) shall be subleased to (A) with respect to the SF Property, the Purchaser, and (B) with respect to the LA Property, Chicago Property and Boston Property, the Seller (regardless of the creditworthiness of Seller) or any person who purchases the IMD Business (provided that the entity entering into the sublease agreement as a subtenant shall be reasonably acceptable to the Purchaser) (the landlord under such sublease being referred to as the "Sublandlord" and the tenant under such sublease being referred to as the "Subtenant"), in each case, upon such terms as shall be mutually acceptable to the Sublandlord and Subtenant provided that (1) the Subtenant shall pay rent and other charges under such sublease agreement equal to its proportionate share of the rent and other charges payable by the Sublandlord to the landlord under the underlying lease (which proportionate share shall be based upon the relative square footage of the subleased space in proportion to the square footage of the overall demised space under the underlying lease), (2) the term of the sublease agreement shall be a period commencing on the Closing Date and ending on the day immediately preceding the expiration date of the underlying lease (as the same may be extended pursuant to the terms of the underlying lease), (3) any alterations or modifications which the Sublandlord and Subtenant mutually agree need to be made to the demised premises in order to segregate the subleased space from the remainder of the demised premises under the underlying lease shall be performed by the Sublandlord and the cost thereof (including the cost of any plans and specifications, drawings, permits, licenses, and other "soft" costs related thereto) shall be shared by the Sublandlord and Subtenant in proportion to the square footage of their respective spaces. Prior to the execution and delivery of the sublease agreement for a particular Sublease Property, subject to reasonable security procedures and giving due regard to regulatory considerations (e.g., segregation) including the right to relocate such employees within the applicable premises, and for a commercially reasonable period after the Closing Date, (i) with respect to the SF Property, to the extent that Transferred Employees occupied any portion of the SF Property prior to Closing, such Transferred Employees shall be permitted to continue to occupy and use the SF Property to the same extent and for the same purposes as the SF Property was occupied by such Transferred Employees prior to the Closing; provided, that the foregoing shall be subject to Purchaser's ability to substitute a substantially similar number of new employees of Purchaser for any such Transferred Employees as provided in Paragraph 18 below, and (ii) with respect to each Sublease Property other than the SF Property, to the extent that Excluded Employees occupied any portion of such Sublease Property prior to Closing, such Excluded Employees shall be permitted to continue to occupy and use such Sublease Property to the same extent and for the same purposes as such Sublease Property was occupied by such Excluded Employees prior to the Closing; provided, that the foregoing shall be subject to Seller's ability to substitute a substantially similar number of new employees of Seller for any such Excluded Employees as provided in Paragraph 18 below. In each case described in clauses (i) and (ii) above, no rent or other payments shall be made to the party which is the tenant under the underlying lease until execution and delivery of the applicable sublease agreement at which time all rent calculated under the sublease

agreement for the period from the Commencement Date (which date shall be the Closing Date) through end of the month in which the sublease agreement is executed shall be paid to the Sublandlord contemporaneously with the execution and delivery of the sublease agreement.

(c) If any consent or approval from any landlord under an underlying lease is required pursuant to the terms of the underlying lease in order to effectuate the applicable sublease agreement and/or to the extent that any landlord under an underlying lease has recapture and/or termination rights that would be triggered by the proposed sublease arrangement to be reflected in the applicable sublease agreement, Seller and Purchaser will cooperate and use commercially reasonable efforts in obtaining such consent to the applicable sublease agreement and/or obtaining waivers from the landlord with respect to any such recapture and/or termination rights and shall otherwise comply in all respects with the terms and provisions of the underlying lease in connection with the execution and delivery of the applicable sublease agreement.

18. Deferred Transfers. Notwithstanding anything to the contrary contained in the Agreement, (a) the parties agree that during the nine month period after the Closing Date that Excluded Employees are permitted to occupy and use real property subject to a Transferred Real Property Lease in accordance with Section 8.11(f) of the Agreement, that the Seller and its Affiliates shall also be permitted to substitute a substantially similar number of new employees of Seller or its Affiliates for any such Excluded Employees, and that any such new employees of Seller or its Affiliates shall be permitted to occupy and use such real property to the same extent and on the same basis as the Excluded Employees in accordance with Section 8.11(f), and (b) the parties agree that during the nine month period after the Closing Date that Transferred Employees are permitted to occupy and use real property is not subject to a Transferred Real Property Lease in accordance with Section 8.11(g) of the Agreement, that the Purchaser and its Affiliates shall also be permitted to substitute a substantially similar number of new employees of Purchaser or its Affiliates for any such Transferred Employees, and that any such new employees of Purchaser or its Affiliates shall be permitted to occupy and use such real property to the same extent and on the same basis as the Transferred Employees in accordance with Section 8.11(g).

19. 745 Seventh Avenue. The parties acknowledge that there is no mortgage encumbering 745's interest in the premises at 745 Seventh Avenue, New York, New York and that, notwithstanding Section 10.1(d) of the Agreement, only the \$500,000,000 promissory note made by 745 in favor of its Affiliate will be fully repaid and extinguished.

20. Prorations. Notwithstanding Section 12.2 of the Agreement, to the extent that the parties are unable to agree upon all customary prorations for the Purchased Assets as of the Closing, they shall cooperate in finalizing all such prorations within thirty (30) days following the Closing Date.

21. Schedules. Corrected Schedules 1.1(a) and 1.1(b) are attached hereto.

This letter agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of New

York applicable to contracts made and to be performed entirely within that state. This letter agreement may be executed in any number of counterparts (including by facsimile), each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

[Remainder of page intentionally left blank.]

Sincerely,

BARCLAYS CAPITAL INC.

By: _____
Name:
Title:

Agreed to and accepted as of the date first written above:

LEHMAN BROTHERS HOLDINGS INC.

By: _____
Name:
Title:

LEHMAN BROTHERS INC.

By: _____
Name:
Title:

LB 745 LLC

By: _____
Name:
Title:

WGM Comments - September 18, 2008 - 7:30 pmatt

[*Letterhead of Barclays*]

September [], 2008

Lehman Brothers Holdings Inc.
Lehman Brothers Inc.
I.B. 745 L.L.C.
Attn: Steven Berkenfeld, Esq.
Facsimile: (646) 758-4236

Ladies and Gentlemen:

Reference is made to the Asset Purchase Agreement, dated as of September 16, 2008 (the "Agreement"), by and among Lehman Brothers Holdings Inc. ("LBHI"), Lehman Brothers Inc. ("LBI"), LB 745 LLC ("745") and Barclays Capital Inc. ("Purchaser"). Each capitalized term used and not defined herein shall have the meaning ascribed to it in the Agreement. This letter agreement clarifies the intention of the parties with respect to certain provisions of the Agreement and is binding on the parties hereto upon its execution and delivery.

1. Purchased Assets. The Purchased Assets means all of the assets of Seller used in connection of the Business (excluding the Excluded Assets), including the items set forth in clauses (a) through (s) of the definition of "Purchased Assets." Also included in the Purchased Assets are (a) the equity of Lehman Brothers Canada, Inc. and Lehman Brothers Sudamerica SA and Lehman Brothers Uruguay SA, (b) the government securities trading and mortgage trading operations of LBI (but mortgage securities only to the extent referred to below) and (c) all prime brokerage accounts and securities lending operations of the Business (for the avoidance of doubt, other than those that are part of the IMD Business).

2. IMD Business. Included in For purposes of this Agreement, the IMD Business consists of the asset management business, and the alternatives – private equity business and businesses of Seller and the Subsidiaries, but not the private investment management business – of Seller and the Subsidiaries (other than the CTS (Corporate Cash) business. As a result, Excluded Assets include the asset management business, the alternatives – private equity business and the CTS (Corporate Cash) business and Purchased Assets include the private investment management business (other than the CTS (Corporate Cash) business). In connection with Section 9.1(c) of the Agreement, the Purchaser shall establish a retention program for certain employees of the private investment management business (other than the CTS (Corporate Cash) business).

3. Excluded Assets. Included in the Excluded Assets are (a) the mortgage servicing rights for Ginnie Mae guaranteed securities and (b) all assets and rights of the Lehman European entities in administration. Included in clause (h) of the definition of "Excluded

Assets" are life insurance policies owned by Seller and its Subsidiaries. The reference to "third parties" in clause (i) of the definition of "Excluded Assets" includes any person, including Affiliates of Seller.

4. Assumed Liabilities. Clause (a) of the definition of "Assumed Liabilities" consists of all Liabilities of Seller incurred by Purchaser, after the Closing, in connection with the Business. Nothing in this Paragraph 4 is intended to modify Section 8.12 of the Agreement.

5. License. All marks containing the words "LEHMAN" or "LEHMAN BROTHERS" assigned under the Agreement shall be considered Licensed Marks under Section 8.9 of the Agreement. [The license to use the Licensed Marks granted pursuant to Section 8.9 of the Agreement with respect to the investment banking and capital markets businesses of Seller and its Subsidiaries is limited to a term of 2 years from the Closing Date (without limiting the term of the license granted for use in connection with the IMD Business (including in respect of investment funds) or the unwinding of any operations or businesses of Seller or any of its Subsidiaries).] The licenses pursuant to Section 8.9 are not assignable or sublicensable, except that such licenses are assignable and sublicensable (i) for use in connection with IMD Business or any portion of the IMD Business, (ii) to Seller's Subsidiaries and (iii) to the purchaser of any other businesses of Seller and its Subsidiaries solely in connection with the continued operations and/or unwinding up of any such businesses.

5.6. Long Positions. The Purchased Assets and Assumed Liabilities include hedges placed on the Long Positions that are entered into after the date of the Agreement and before Closing, but will not include any other types of hedges or derivatives (other than exchange-traded derivatives as specific in clause (d) of the definition of "Purchased Assets"). The reference to "government securities" in the definition of Long Positions includes securities of any government agency.

6.7. Subordinated Notes of LBI. The outstanding subordinated notes of LBI and the proceeds thereof are not Assumed Liabilities or Purchased Assets, and any Liabilities associated with such subordinated notes therefore are Excluded Liabilities.

7.8. [Residential Real Estate Mortgage Securities. To facilitate the 50% split division of residential real estate mortgage securities referred to in clause (e) of the definition of Purchased Assets and clause (k) of the definition of Excluded Assets, Purchaser will acquire non-agency residential mortgage backed securities and manufactured housing securities (which are therefore considered Purchased Assets) and Seller will retain HELOC, ABS, CDO, CLO, VFN, franchise loan, student loan, [scratch and dent], second lien, and reverse mortgage backed securities (which are therefore considered Excluded Assets), in each case as will be further allocated by the parties.]

8.9. Breakup Fee. 745 is jointly and severally liable with LBHI and LBI for Seller's obligations under the Agreement to pay the Breakup Fee and Expense Reimbursement (each of which has the meaning ascribed to it in the Breakup Fee and Competing Bid Order).

9.10. Excluded Cash Assets and Retained Cash. All cash, cash equivalents, bank deposits or similar cash items of Seller and its Subsidiaries are Excluded Assets, other than the "Retained Cash," which is a Purchased Asset. The "Retained Cash" is \$700 million in cash,

cash equivalents, bank deposits or similar cash items (rather than \$1.3 billion), plus the cash amount received from closing out Long Positions, less the cash amount expended to close out Short Positions.

10. 9/16/08 Balance Sheet. Included in "Excluded Assets" are all of the categories of assets valued at "0" on the balance sheet printed at 11:18 AM on 9/16/08 and initiated "SP," which was previously provided to Purchaser. (such balance sheet, the "9/16/08 Balance Sheet"). Included in "Excluded Liabilities" are all of the categories of liabilities valued at "0" on the 9/16/08 Balance Sheet.

11. [Derivatives. It is acknowledged and agreed that the exchange traded derivatives reflected on Exhibit A shall be Purchased Assets and no over-the-counter derivatives shall be Purchased Assets.]

13. [Certain Assets and Obligations. The Sale shall include all prime brokerage accounts and securities lending operations of the Business, other than those that are part of the IMD Business. The Sale shall include all repo agreements reflected on Exhibit A. All customer accounts shall be transferred to the Purchaser at Closing and no such accounts shall be liquidated in the Sale.]

11. Payables, Deposits and Receivables. No payables or deposits shall be Assumed Liabilities, except to the extent relating to a Purchased Contract. No receivables shall be Purchased Assets, except to the extent relating to a Purchased Contract.

14. [12. Intercompany Obligations. Except as expressly contemplated by this Letter, the Agreement [or Section 4 above] with respect to assets used in the conduct of the Business or the Transition Services Agreement, Purchased Assets and Assumed Liabilities shall not include any intercompany receivables or payables or other obligations of Seller and/or its Subsidiaries.]

15. [Eagle Energy. Included in the Purchased Assets are the equity interests or assets (at the election of the Purchaser prior to the entry of the Sale Order) of Eagle Energy Partners I, L.P. (rather than Eagle Energy Management LLC), and

13. Eagle Energy as Excluded Asset. The equity interests and assets of Eagle Energy Management LLC, including the assets of the energy marketing and services business of Lehman Brothers Commodity Services, Inc.] [Purchaser shall have the right, prior to the Closing, by delivery of a written notice to Seller, not to acquire Eagle Energy Partners I, L.P. and the assets of the energy marketing and services business of Lehman Brothers Commodity Services, Inc.]

16. Schedule 12.3. All references to Schedule 12.3 are deleted, are Excluded Assets (rather than Purchased Assets).

14. Schedule 12.3. Following the Closing, the parties shall reasonably agree to an allocation of the purchased price (including the Assumed Liabilities) among the Purchased Assets and set forth such allocation on a Schedule 12.3.

15. Risk of Loss of Artwork. During such period that Purchaser has the right to possess the artwork following the Closing pursuant to Section 8.16 of the Agreement, Purchaser shall bear the risk of loss for such artwork. In the event that any artwork is damaged or lost during such period, Purchaser shall pay to Seller an amount equal to the appraised value (as determined by an independent, recognized appraiser) for such artwork, assuming such artwork was not lost or damaged.

16. Records. The records referred to in Section 8.7 include all Documents that are Purchased Assets. The joint administrators of the Lehman European entities are parties to which records and personnel shall be made available in accordance with the terms of Section 8.7.

17. [Schedule 9.1(c).] 18. Subleases. Notwithstanding anything to the contrary contained in Sections 4.2(d), 4.3(c), 8.14 or any other provision of the Agreement, with respect to the leased premises located in (i) 555 California Street, San Francisco, California ("SF Property"), (ii) 125 High Street, Boston, Massachusetts ("Boston Property"), (iii) 190 S. LaSalle Street, Chicago, Illinois ("Chicago Property"), and (iv) 10250 Constellation Boulevard, Los Angeles, California ("LA Property" and together with the SF Property, Boston Property and Chicago Property, the "Sublease Properties"), the parties agree as follows:

(a) As contemplated in the Agreement, on the Closing Date, (i) the underlying leases affecting the Chicago Property, the LA Property and the Boston Property shall be assumed by Seller in connection with the bankruptcy proceedings and each of such leases shall be assigned by Seller to Purchaser and Purchaser shall assume all of Seller's obligations thereunder pursuant to assignment and assumption agreements mutually acceptable to Seller and Purchaser, and (ii) the underlying lease affecting the SF Property shall be assumed by Seller in connection with the bankruptcy proceedings.

(b) With respect to each Sublease Property, Seller and Purchaser shall, within a commercially reasonable period of time following the Closing Date, negotiate in good faith, and thereafter execute and deliver, a sublease agreement reasonably acceptable to both Purchaser and Seller and subject to the terms of the applicable underlying lease, pursuant to which a portion of the demised premises under such underlying lease (such portion of the premises to be agreed upon by the parties) shall be subleased to (A) with respect to the SF Property, the Purchaser, and (B) with respect to the LA Property, Chicago Property and Boston Property, the Seller (regardless of the creditworthiness of Seller) or any person who purchases the IMD Business (provided that the entity entering into the sublease agreement as a subtenant shall be reasonably acceptable to the Purchaser) (the landlord under such sublease being referred to as the "Sublandlord" and the tenant under such sublease being referred to as the "Subtenant"), in each case, upon such terms as shall be mutually acceptable to the Sublandlord and Subtenant provided that (1) the Subtenant shall pay rent and other charges under such sublease agreement equal to its proportionate share of the rent and other charges payable by the Sublandlord to the landlord under the underlying lease (which proportionate share shall be based upon the relative square footage of the subleased space in proportion to the square footage of the overall demised space under the underlying lease), (2) the term of the sublease agreement shall be a period commencing on the Closing Date and ending on the day immediately preceding the expiration date of the underlying lease (as the same may be

extended pursuant to the terms of the underlying lease), (3) any alterations or modifications which the Sublandlord and Subtenant mutually agree need to be made to the demised premises in order to segregate the subleased space from the remainder of the demised premises under the underlying lease shall be performed by the Sublandlord and the cost thereof (including the cost of any plans and specifications, drawings, permits, licenses, and other "soft" costs related thereto) shall be shared by the Sublandlord and Subtenant in proportion to the square footage of their respective spaces. Prior to the execution and delivery of the sublease agreement for a particular Sublease Property, subject to reasonable security procedures and giving due regard to regulatory considerations (e.g., segregation) including the right to relocate such employees within the applicable premises, and for a commercially reasonable period after the Closing Date, (i) with respect to the SF Property, to the extent that Transferred Employees occupied any portion of the SF Property prior to Closing, such Transferred Employees shall be permitted to continue to occupy and use the SF Property to the same extent and for the same purposes as the SF Property was occupied by such Transferred Employees prior to the Closing; provided, that the foregoing shall be subject to Purchaser's ability to substitute a substantially similar number of new employees of Purchaser for any such Transferred Employees as provided in Paragraph 19.18 below, and (ii) with respect to each Sublease Property other than the SF Property, to the extent that Excluded Employees occupied any portion of such Sublease Property prior to Closing, such Excluded Employees shall be permitted to continue to occupy and use such Sublease Property to the same extent and for the same purposes as such Sublease Property was occupied by such Excluded Employees prior to the Closing; provided, that the foregoing shall be subject to Seller's ability to substitute a substantially similar number of new employees of Seller for any such Excluded Employees as provided in Paragraph 19.18 below. In each case described in clauses (i) and (ii) above, no rent or other payments shall be made to the party which is the tenant under the underlying lease until execution and delivery of the applicable sublease agreement at which time all rent calculated under the sublease agreement for the period from the Commencement Date (which date shall be the Closing Date) through end of the month in which the sublease agreement is executed shall be paid to the Sublandlord contemporaneously with the execution and delivery of the sublease agreement.

(c) If any consent or approval from any landlord under an underlying lease is required pursuant to the terms of the underlying lease in order to effectuate the applicable sublease agreement and/or to the extent that any landlord under an underlying lease has recapture and/or termination rights that would be triggered by the proposed sublease arrangement to be reflected in the applicable sublease agreement, Seller and Purchaser will cooperate and use commercially reasonable efforts in obtaining such consent to the applicable sublease agreement and/or obtaining waivers from the landlord with respect to any such recapture and/or termination rights and shall otherwise comply in all respects with the terms and provisions of the underlying lease in connection with the execution and delivery of the applicable sublease agreement.

19.18. Deferred Transfers. Notwithstanding anything to the contrary contained in the Agreement, (a) the parties agree that during the nine month period after the Closing Date that Excluded Employees are permitted to occupy and use real property subject to a

Transferred Real Property Lease in accordance with Section 8.11(f) of the Agreement, that the Seller and its Affiliates shall also be permitted to substitute a substantially similar number of new employees of Seller or its Affiliates for any such Excluded Employees, and that any such new employees of Seller or its Affiliates shall be permitted to occupy and use such real property to the same extent and on the same basis as the Excluded Employees in accordance with Section 8.11(f), and (b) the parties agree that during the nine month period after the Closing Date that Transferred Employees are permitted to occupy and use real property is not subject to a Transferred Real Property Lease in accordance with Section 8.11(g) of the Agreement, that the Purchaser and its Affiliates shall also be permitted to substitute a substantially similar number of new employees of Purchaser or its Affiliates for any such Transferred Employees and that any such new employees of Purchaser or its Affiliates shall be permitted to occupy and use such real property to the same extent and on the same basis as the Transferred Employees in accordance with Section 8.11(g).

20-19. 745 Seventh Avenue. The parties acknowledge that there is no mortgage encumbering 745's interest in the premises at 745 Seventh Avenue, New York, New York and that, notwithstanding Section 10.1(d) of the Agreement, only the \$500,000,000 promissory note made by 745 in favor of its Affiliate will be fully repaid and extinguished.

21-20. Prorations. Notwithstanding Section 12.2 of the Agreement, to the extent that the parties are unable to agree upon all customary prorations for the Purchased Assets as of the Closing, they shall cooperate in finalizing all such prorations within thirty (30) days following the Closing Date.

21. Schedules. Corrected Schedules 1.1(a) and 1.1(b) are attached hereto.

This letter agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within that state. This letter agreement may be executed in any number of counterparts (including by facsimile), each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

[*Remainder of page intentionally left blank*]

Sincerely,

BARCLAYS CAPITAL INC.

By: _____
Name:
Title:

Agreed to and accepted as of the date first written above.

LEHMAN BROTHERS HOLDINGS INC.

By: _____
Name:
Title:

LEHMAN BROTHERS INC.

By: _____
Name:
Title:

LB 745 LLC

By: _____
Name:
Title:

Signature Page to Amendment I to
Asset Purchase Agreement
NY21191686748413250415113125051.DOC73683.1037

Document comparison done by DeltaView on Friday, September 19, 2008 3:11:36 AM

Input:	
Document 1	pcdocs://ny2/1916861/4
Document 2	pcdocs://ny2/1916861/5
Rendering set	Standard

Legend:	
Insertion	
Deletion	
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Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
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Deletions	44
Moved from	3
Moved to	3
Style change	0
Format changed	0
Total changes	103

DEPOSITION

EXHIBIT 614A

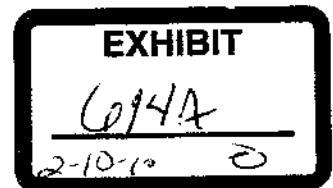
REDACTED

From: "Summers, Elisabeth Stuart" [summerse@sullcrom.com]
Sent: 09/19/2008 05:34 AM AST
To: Victor LEWKOW; "michaelklein@michaelsklein.com"
<michaelklein@michaelsklein.com>; Robert DAVIS; Duane MCLAUGHLIN; David
LEINWAND; "lori.fife@weil.com" <lori.fife@weil.com>;
"jacqueline.marcus@weil.com" <jacqueline.marcus@weil.com>
Cc: "Serota, Daniel" <SerotaD@sullcrom.com>; "Feldstein, Hydee R."
<feldsteinh@sullcrom.com>; "Clayton III, W. Jay" <ClaytonW@sullcrom.com>;
"Lacy, Robinson B." <Lacyr@sullcrom.com>; "Raisler, Kenneth"
<Raislerk@sullcrom.com>; "Gilberg, David" <GilbergD@sullcrom.com>; "Eitel,
Mitchell" <Eitelm@sullcrom.com>; "Myers, Ken S." <myersk@sullcrom.com>;
"Fernandez, Angel D." <fernandezza@sullcrom.com>; "Jackson, Matthew"
<Jacksonm@sullcrom.com>; "Richard.Smith3@barclayscapital.com"
<Richard.Smith3@barclayscapital.com>; "Jonathan.Hughes@barclayscapital.com"
<Jonathan.Hughes@barclayscapital.com>; "Jason.White@barclayscapital.com"
<Jason.White@barclayscapital.com>; "erin.mansfield@barclayscapital.com"
<erin.mansfield@barclayscapital.com>
Subject: Clarifying Letter/First Amendment- S&C Comments re: DTC issue

Dear all,

Attached please find our comments to the clarifying letter which comments solely address (1) the purchase price holdback stemming from the DTC issue, and (2) to restyle this document as a First Amendment, rather than a side letter.

Kindly note that in the interest of time, the attached is circulated simultaneously to our client and accordingly remains subject to further internal and client comment and review. Additionally, substantive comments with respect to the other aspects of this document will come under separate cover.



Please forward this email as appropriate.

Best regards,

Liz

Elisabeth Summers
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004
Phone: (212) 558-4774
Fax: (212) 558-3588
Email: summers@succrom.com

- NY12533-#230264-v1-Rider_to_First_Amendment_to_APADOC - S&C Comments 9-19 to Clarifying Letter.pdf

RIDER 6-A

22. Holdback. Notwithstanding any other provision of the APA or this Agreement (including Section 3.2 and Section 12.2 of the APA), the Purchaser shall retain a portion of the Purchase Price equal to two hundred fifty million dollars (\$250,000,000) to secure the LBI obligations that the Purchaser has been required to guaranty to (i) the Depository Trust Clearing Corporation ("DTCC") and its Subsidiaries, (ii) the Depository Trust Company ("DTC"), (iii) the National Securities Clearing Corporation ("NSCC"), and (iv) the Fixed Income Clearing Corporation ("FICC"). All Assumed Liabilities shall be for the account of the Purchaser and shall not be charged against the Holdback. All Excluded Liabilities shall be charged against the Holdback and no intercompany liabilities for the account of LBHI and/or any LBHI Affiliate shall be required to be paid by the Purchaser.

*Style as a 1st Amendment

CGSHWGM Comments - September 18, 2008 (230 - 7:30 PM)

SAC
9/19/08
~5:15 am

[Letterhead of Barclays]

Rider 1-A

Rider 1-B

September 18, 2008
~~Lehman Brothers Holdings Inc.
Lehman Brothers Inc.
LB 745 LLC
Attn: Steven Berkensfeld, Esq.
Facsimile: (646) 758-4226~~
Ladies and Gentlemen:

global △

Reference is made to the Asset Purchase Agreement, dated as of September 16, 2008 (the "Agreement"), by and among Lehman Brothers Holdings Inc. ("LBI" or "Holdings"), Lehman Brothers Inc. ("LBI"), LB 745 LLC ("745") and Barclays Capital Inc. ("Purchaser"). Each capitalized term used and not defined herein shall have the meaning ascribed to it in the Agreement. This letter agreement clarifies the intention of the parties with respect to certain provisions of the Agreement and is binding on the parties hereto upon its execution and delivery.

Original

In Certain Definitions.

1. Purchased Assets. Included in the Purchased Assets are the Purchased Assets means all of the assets of Seller used in connection of the Business (excluding the Excluded Assets), including the items set forth in clauses (a) through (s). Also included in the Purchased Assets are (a) the equity of Lehman Brothers Canada, Inc. and (b) the government securities trading and mortgage trading operations of LBI (but mortgage securities only to the extent referred to below).

of Seller
and
its
Subsidiaries

2. IMD Business. Included in the IMD Business is the asset management business, the alternatives + private equity business and the private investment management business. [To be confirmed by Barclays].

The definition
of
Excluded
Assets
hereby
amended
to include
the
following:
(r)

3. Certain Government Securities. The Excluded Assets. Included in the Excluded Assets are the mortgage servicing rights for Ginnie Mae guaranteed securities shall be Excluded Assets. Purchased Assets shall include the government securities trading and mortgage trading operations of the LBI (but mortgage securities only to the extent referred to below). Instead in clause (h) of the definition of "Excluded Assets" are life insurance policies owned by Seller and its Subsidiaries.

4. Purchased Assets and Assumed Liabilities. Other than assets purchased directly from LBI and 745 pursuant to the terms of the Agreement, the only assets of Holdings or Subsidiaries of Seller that shall constitute Purchased Assets are assets of Holdings or such Subsidiaries to the extent used in the conduct of the Business as the Business was conducted on the date of the Agreement, and in no event shall Purchased Assets include any financial assets of Holdings or such Subsidiaries. Other than liabilities of LBI and 745 that are assumed by

unlike
moving
into
its
own
Sector

The definition of 'IMD Business' in Section 1.1 of the Org. Agmt is hereby deleted in its entirety and replaced with the following:

RIDER 1-A

EXECUTION COPY

Draft
link

First Amendment

AMONG
LEHMAN BROTHERS HOLDINGS INC.

LEHMAN BROTHERS INC.

LB 745 LLC

AND

BARCLAYS CAPITAL INC.

Dated as of September 16, 2008

三

- Note:
This amendment
will need to be
filed on Friday.

RIDER 1-B

First Amendment to
ASSET PURCHASE AGREEMENT

19

ASSET PURCHASE AGREEMENT, dated as of September 16, 2008 (this "Agreement"), among LEHMAN BROTHERS HOLDINGS INC., a Delaware corporation ("LBHI"), LEHMAN BROTHERS INC., a Delaware corporation ("LBI") and, together with LBHI, the "Seller"), LB 745 LLC, a Delaware limited liability company ("745"), and BARCLAYS CAPITAL INC., a Connecticut corporation ("Purchaser").

Seller
745 and
Purchaser are parties to the
APA, dated as of
September
16, 2008
(the "APA")
by and
among Seller,
745 and
Purchaser

WITNESSETH:

WHEREAS, LBHI is a debtor in possession under title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), and filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on September 11, 2008 in the United States Bankruptcy Court for the Southern District of New York (Manhattan) (the "Bankruptcy Court") (Case No. 08-13555) (the "Bankruptcy Case");

WHEREAS, the Seller and its Subsidiaries presently conduct the
Business;

WHEREAS, Seller and 745 desire to sell, transfer and assign to Purchaser, and Purchaser desires to purchase, acquire and assume from Seller and 745, pursuant to Sections 363 and 365 of the Bankruptcy Code, all of the Purchased Assets and Assumed Liabilities, all as more specifically provided herein; and

WHEREAS, an Affiliate of Purchaser has agreed to provide to LBHI a debtor-in-possession facility (the "DIP Facility") and has agreed to provide to LBI certain other financing;

as set
forth
below

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS

1.1 Certain Definitions.

For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1.1:

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term "control" (including the terms

Original

Purchaser directly from LBI or T43 pursuant to the terms of the Agreement, no liabilities of Holdings or any Subsidiary of Seller shall constitute Assumed Liabilities, except to the extent such liabilities arise directly from a Purchased Asset, and in no event shall any financial liabilities of Holdings or such Subsidiaries constitute Assumed Liabilities. Any liability that is not expressly assumed pursuant to the terms of the Agreement, shall constitute an Excluded Liability.

5. License. All marks containing the words "LEHMAN" or "LEHMAN BROTHERS" assigned under the Agreement shall be considered Licensed Marks under Section 8.9 of the Agreement. [The license to use the Licensed Marks granted pursuant to Section 8.9 of the Agreement with respect to the investment banking and capital markets businesses of Seller and its Subsidiaries is limited to a term of 2 years from the Closing Date (without limiting the term of the license granted for use in connection with the IMD Business (including in respect of investment funds)), or the unwinding of any operations or businesses of Seller or any of its Subsidiaries]. The licenses pursuant to Section 8.9 are not assignable or sublicensable, except that such licenses are assignable and sublicensable to the extent expressly stated in Section 8.9 with respect to the (i) for use in connection with IMD Business or any portion of the IMD Business (ii) to Seller's Subsidiaries and (iii) to the purchaser of any other businesses of Seller and its Subsidiaries solely in connection with the continued operations and/or unwinding of such businesses.]

7 of
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Agreement

6. Financial Assets and Liabilities. The Long Positions that are part of Purchased Assets include any proceeds from such Long Positions, including proceeds resulting from any transfer, sale or disposition thereof or any assets purchased therewith, as well as proceeds of or from any derivative, swap, hedge, repo or similar arrangement in respect of any such Long Position (whether, in each case, such proceeds are in the form of cash, cash equivalents or similar type of assets). Long Positions. The Purchased Assets and Assumed Liabilities include hedges placed on the Long Positions that are entered into after the date of the Agreement and before Closing, but will not include any other types of hedges or derivatives (except exchange traded derivatives as contemplated by the Agreement and this letter). The reference to "government securities" in the definition of Long Positions includes securities of any government agency. Subject to Section 8 below, the only financial assets that shall constitute Purchased Assets are the financial assets reflected on Exhibit A, and the only financial liabilities that shall constitute Assumed Liabilities are the liabilities set forth on Exhibit A. It is acknowledged that the values of assets set forth on Exhibit A reflect Seller's marks as of the date and time set forth on Exhibit A and that the face and nominal amount of such assets may be different than such marks.

7.6. Subordinated Notes of LBI. The outstanding subordinated notes of LBI and the proceeds thereof are not Assumed Liabilities or Purchased Assets, and any Liabilities associated with such subordinated notes therefore are Excluded Liabilities.

8.7. Residential Real Estate Mortgage Securities. To facilitate the 50% split of residential real estate mortgage securities referred to in clause (e) of the definition of Purchased Assets and clause (k) of the definition of Excluded Assets, Purchaser will acquire non-agency residential mortgage backed securities (which are therefore considered Purchased Assets) and Seller will retain ABS, CDO, CLO, VFN, franchise loan, student loan, scratch and dent, second lien, and reverse mortgage backed securities (which are therefore considered Excluded Assets), in each case as will be further allocated by agreement of the parties. Any

2) - Fix pagination globally.

further allocation of such assets agreed to by the parties pursuant to this Section 8 shall be deemed to be an amendment to Exhibit A. [the parties.]

9.8. Breakup Fee. 745 is jointly and severally liable with LBHI and LBI for Seller's obligations under the Agreement to pay the Breakup Fee and Expense Reimbursement (each of which has the meaning ascribed to it in the Breakup Fee and Competing Bid Order).

10.9. Excluded Cash Assets and Retained Cash. "Retained Cash" as referred to in the Agreement is meant to refer to the All cash, cash equivalents and bank deposits that are being acquired by Purchaser as Purchased Assets. Retained Cash shall be in the amount of \$700 million (not \$1.3 billion) and shall be adjusted as contemplated by Section 6 above. bank deposits or similar cash items of Seller and its Subsidiaries are Excluded Assets, other than the "Retained Cash," which is a Purchased Asset. The "Retained Cash" is \$700 million in cash, cash equivalents, bank deposits or similar cash items (rather than \$1.3 billion), plus the cash amount received from closing out Long Positions, less the cash amount expended to close out Short Positions.

10.10. 9/16/08 Balance Sheet. Included in "Excluded Assets" are all of the categories of assets valued at "0" on the balance sheet printed at 11:18 AM on 9/16/08 and initialed "SBZ" which was previously provided to Purchaser. (such balance sheet, the "9/16/08 Balance Sheet"). Included in "Excluded Liabilities" are all of the categories of Liabilities valued at "0" on the 9/16/08 Balance Sheet.

11. [Derivatives. It is acknowledged and agreed that the exchange-traded derivatives reflected on Exhibit A shall be Purchased Assets and no over-the-counter derivatives shall be Purchased Assets.] 12. Intercompany Obligations. Except as expressly contemplated by the Agreement or Section 4 above with respect to assets used in the conduct of the Business, Purchased Assets and Assumed Liabilities shall not include any intercompany receivables or payables of Seller and its Subsidiaries.]

13. [Certain Assets and Obligations. The Sale shall include all prime brokerage accounts and securities lending operations of the Business, other than those that are part of the JMD Business. The Sale shall include all repo agreements reflected on Exhibit A. All customer accounts shall be transferred to the Purchaser at Closing and no such accounts shall be liquidated in the Sale.]

14. Eagle. The reference to "Eagle Energy Management LLC" in clause (p) of "Purchased Assets" is instead a reference to "Eagle Energy Partners I L.P." Any liabilities or obligations of Eagle Energy Partners I L.P. or any of its Subsidiaries to LEH or any of its Subsidiaries are Excluded Liabilities within Section 2.4(g) of the Agreement and, upon the occurrence of the Closing, any and all such obligations shall no longer be due and payable and shall be forgiven in their entirety. Purchaser shall have the right, prior to the occurrence of the Closing, by delivery of a written notice to Seller, to not acquire Eagle Energy Partners I L.P., in which case it shall be an Excluded Asset. [Intercompany Obligations. Except as expressly contemplated by the Agreement or Section 4 above] with respect to assets used in the conduct of the Business, Purchased Assets and Assumed Liabilities shall not include any intercompany receivables or payables of Seller and its Subsidiaries.]

We assume that the business people have begun preparing this Exhibit.

15. [Eagle Energy. Included in the Purchased Assets are the equity interests or assets (at the election of the Purchaser prior to the entry of the Sale Order) of Eagle Energy Partners L.L.P. (rather than Eagle Energy Management LLC), and the assets of the energy marketing and services business of Lehman Brothers Commodity Services, Inc.] (Purchaser shall have the right, prior to the Closing, by delivery of a written notice to Seller, not to acquire Eagle Energy Partners L.L.P. and the assets of the energy marketing and services business of Lehman Brothers Commodity Services, Inc.)

16. Schedule 12.3. All references to Schedule 12.3 are deleted.

17. . . . [Schedule 9,1(c),]

18. Sublessee. Notwithstanding anything to the contrary contained in Sections 4.2(d), 4.3(c), 8.14 or any other provision of the Agreement, with respect to the leased premises located in (i) 555 California Street, San Francisco, California ("SE Property"), (ii) 125 High Street, Boston, Massachusetts ("Boston Property"), (iii) 190 S. LaSalle Street, Chicago, Illinois ("Chicago Property"), and (iv) 10250 Constellation Boulevard, Los Angeles, California ("L.A. Property" and together with the SE Property, Boston Property and Chicago Property, the "Sublease Properties"), the parties agree as follows:

(a) As contemplated in the Agreement on the Closing Date, (i) the underlying leases affecting the Chicago Property, the LA Property and the Boston Property shall be assumed by Seller in connection with the bankruptcy proceedings and each of such leases shall be assigned by Seller to Purchaser and Purchaser shall assume all of Seller's obligations thereunder pursuant to assignment and assumption agreements mutually acceptable to Seller and Purchaser, and (ii) the underlying leases affecting the SJ Property shall be assumed by Seller in connection with the bankruptcy proceedings.

(b) With respect to each Sublease Property, Seller and Purchaser shall, within a commercially reasonable period of time following the Closing Date, negotiate in good faith and thereafter execute and deliver a sublease agreement reasonably acceptable to both Purchaser and Seller and subject to the terms of the applicable underlying lease, pursuant to which a portion of the demised premises under such underlying lease (such portion of the premises to be agreed upon by the parties) shall be subleased to (A) with respect to the SF Property, the Purchaser, and (B) with respect to the LA Property, Chicago Property and Boston Property, the Seller (regardless of the creditworthiness of Seller) or any person who purchases the IMD Business (provided that the entity entering into the sublease agreement as subtenant shall be reasonably acceptable to the Purchaser) (the landlord under such sublease being referred to as the "Sublandlord" and the tenant under such sublease being referred to as the "Subtenant"), in each case, upon such terms as shall be mutually acceptable to the Sublandlord and Subtenant provided that (1) the Subtenant shall pay rent and other charges under such sublease agreement equal to its proportionate share of the rent and other charges payable by the Sublandlord to the landlord under the underlying lease (which proportionate share shall be based

upon the relative square footage of the subleased space in proportion to the square footage of the overall demised space under the underlying lease). (2) the term of the sublease agreement shall have a period commencing on the Closing Date and ending on the day immediately preceding the expiration date of the underlying lease (as the same may be extended pursuant to the terms of the underlying lease). (3) any alterations or modifications which the Sublandlord and Subtenant mutually agree need to be made to the demised premises in order to segregate the subleased space from the remainder of the demised premises under the underlying lease shall be performed by the Sublandlord and the cost thereof (including the cost of any plans and specifications, drawings, permits, licenses, and other "soft" costs related thereto) shall be shared by the Sublandlord and Subtenant in proportion to the square footage of their respective spaces. Prior to the execution and delivery of the sublease agreement for a particular Sublease Property, subject to reasonable security procedures and giving due regard to regulatory considerations (e.g., secession) including the right to relocate such employees within the applicable premises; and for a commercially reasonable period after the Closing Date, (i) with respect to the SF Property, to the extent that Transferred Employees occupied any portion of the SF Property prior to Closing, such Transferred Employees shall be permitted to continue to occupy and use the SF Property to the same extent and for the same purposes as the SF Property was occupied by such Transferred Employees prior to the Closing; provided, that the foregoing shall be subject to Purchaser's ability to substitute a substantially similar number of new employees of Purchaser for any such Transferred Employees as provided in Paragraph 11 below, and (ii) with respect to each Sublease Property other than the SF Property, to the extent that Excluded Employees occupied any portion of such Sublease Property prior to Closing, such Excluded Employees shall be permitted to continue to occupy and use such Sublease Property to the same extent and for the same purposes as such Sublease Property was occupied by such Excluded Employees prior to the Closing; provided, that the foregoing shall be subject to Seller's ability to substitute a substantially similar number of new employees of Seller for any such Excluded Employees as provided in Paragraph 11 below. In each case described in clauses (i) and (ii) above, no rent or other payments shall be made to the party which is the tenant under the underlying lease until execution and delivery of the applicable sublease agreement at which time all rent calculated under the sublease agreement for the period from the Commencement Date (which date shall be the Closing Date) through end of the month in which the sublease agreement is executed shall be paid to the Sublandlord contemporaneously with the execution and delivery of the sublease agreement.

(c) If any consent or approval from any landlord under an underlying lease is required pursuant to the terms of the underlying lease in order to effectuate the applicable sublease agreement and/or to the extent that any landlord under an underlying lease has recapture and/or termination rights that would be triggered by the proposed sublease arrangement to be reflected in the applicable sublease agreement, Seller and Purchaser will cooperate in obtaining such consent to the applicable sublease agreement and/or obtaining waivers from the landlord with respect to any such recapture and/or termination rights and shall otherwise comply

in all respects with the terms and provisions of the underlying lease in connection with the execution and delivery of the applicable sublease agreement.

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19. Deferred Transfers. Notwithstanding anything to the contrary contained in the Agreement, (a) the parties agree that during the nine month period after the Closing Date that Excluded Employees are permitted to occupy and use real property subject to a Transferred Real Property Lease in accordance with Section 8.11(f) of the Agreement, that the Seller and its Affiliates shall also be permitted to substitute a substantially similar number of new employees of Seller or its Affiliates for any such Excluded Employees, and that any such new employees of Seller or its Affiliates shall be permitted to occupy and use such real property to the same extent and on the same basis as the Excluded Employees in accordance with Section 8.11(f), and (b) the parties agree that during the nine month period after the Closing Date that Transferred Employees are permitted to occupy and use real property if not subject to a Transferred Real Property Lease in accordance with Section 8.11(g) of the Agreement, that the Purchaser and its Affiliates shall also be permitted to substitute a substantially similar number of new employees of Purchaser or its Affiliates for any such Transferred Employees, and that any such new employees of Purchaser or its Affiliates shall be permitted to occupy and use such real property to the same extent and on the same basis as the Transferred Employees in accordance with Section 8.11(g).

20. 745 Seventh Avenue. The parties acknowledge that there is no mortgage encumbering 745's interest in the premises at 745 Seventh Avenue, New York, New York and that notwithstanding Section 10.1(d) of the Agreement, only the \$500,000,000 promissory note made by 745 in favor of its Affiliate will be fully repaid and extinguished.

21. Prorations. Notwithstanding Section 12.2 of the Agreement, to the extent that the parties are unable to agree upon all prorations for the Purchased Assets as of the Closing, they shall cooperate in finalizing all such prorations within thirty (30) days following the Closing Date.

This letter agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within that state. This letter agreement may be executed in any number of counterparts (including by facsimile), each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

23. Governing Law,

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Countersign

[Remainder of page intentionally left blank]

RIDER 6-A

22. Holdback. Notwithstanding any other provision of the APA or this Agreement (including Section 3.2 and Section 12.2 of the APA), the Purchaser shall retain a portion of the Purchase Price equal to two hundred fifty million dollars (\$250,000,000) to secure the LBI obligations that the Purchaser has been required to guaranty to (i) the Depository Trust Clearing Corporation ("DTCC") and its Subsidiaries, (ii) the Depository Trust Company ("DTC"); (iii) the National Securities Clearing Corporation ("NSCC"), and (iv) the Fixed Income Clearing Corporation ("FICC"). All Assumed Liabilities shall be for the account of the Purchaser and shall not be charged against the Holdback. All Excluded Liabilities shall be charged against the Holdback and no intercompany liabilities for the account of LBHI and/or any LBHI Affiliate shall be required to be paid by the Purchaser.

RIDER S-1

Sincerely,

BARCLAYS CAPITAL INC.

By: _____
Name:
Title:

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last
signature
block
on
the
page

Agreed to and accepted as of the date first written above:

LEHMAN BROTHERS HOLDINGS INC.

By: _____
Name:
Title:

LEHMAN BROTHERS INC.

By: _____
Name:
Title:

LB 745 LLC

By: _____
Name:
Title:

First

Signature Page to Amendment to
Asset Purchase Agreement
NY2A191686102A15135920415325041.DOC\73683.1037

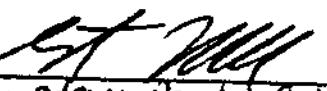
→ RIDER 5-1

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

LEHMAN BROTHERS HOLDINGS INC.

By: 
Name: Steven Berkmanfield
Title: Vice President

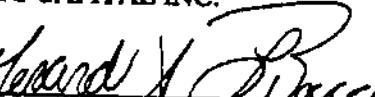
LEHMAN BROTHERS INC.

By: 
Name: Steven Berkmanfield
Title: Managing Director

LB 745 LLC

By: 
Name:
Title:

BARCLAYS CAPITAL INC.

By: 
Name: Gerard LaRocca
Title: Chief Executive Officer

DEPOSITION

EXHIBIT 33

Administrator

Sent: Tuesday, March 24, 2009 10:40 PM

From: Keller, Andy R [akeller@stblaw.com]
Sent: Friday, September 19, 2008 1:20 PM (GMT)
To: Berkenfeld, Steven [sberkenf@lehman.com]; Bailey, Emma [ebailey@lehman.com]
Subject: FW: CGSH comments on Clarifying Letter
Attach: Comments on Letter.pdf

From: Robert P DAVIS [mailto:rdavis@cgsh.com]

Sent: Friday, September 19, 2008 9:01 AM

To: robert.messineo@weil.com; vlewkow@cgsh.com; dleinwand@cgsh.com; dmclaughlin@cgsh.com; rdavis@cgsh.com; Finley, John G; Keller, Andy R; Martelli, Peter; david.murgio@weil.com; michael.lubowitz@weil.com; David.Herman@weil.com; Serota, Daniel; Feldstein, Hydee R.; Clayton III, W. Jay; Lacy, Robinson B.; Ratsler, Kenneth; Gilberg, David; Eitel, Mitchell; Myers, Ken S.; Fernandez, Angel D.; Jackson, Matthew; Richard.Smith3@barclayscapital.com; Jonathan.Hughes@barclayscapital.com; Jason.White@barclayscapital.com; erin.mansfield@barclayscapital.com; michaelklein@michaelsklein.com; Summers, Elisabeth Stuart; archie.cox@barclayscapital.com; lori.lise@weil.com; jacqueline.marcus@weil.com
Subject: Comments on Clarifying Letter

Attached is a combined mark up of our comments to the latest weil draft of the clarifying letter, which we plan to discuss shortly.

b

Robert P. Davis
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza, New York NY 10006
t: +1 212 225 2670 | f: +1 212 225 3999 | m: +1 646 894 3878
<<http://www.clearygottlieb.com/>> www.clearygottlieb.com | <<mailto:rdavis@cgsh.com>> rdavis@cgsh.com

This message is being sent from a law firm and may contain confidential or privileged information. If you are not the intended recipient, please advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy.



6/22/2009

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Purchased Intellectual Property, includes
Intellectual Property Rights,
Software and Technology
Worldwide that are used in,
related to, or otherwise necessary
for the Commodity business.
September [], 2008

* Lehman Brothers Holdings Inc.
Lehman Brothers Inc.
LB 745 LLC
Attn: Steven Berkowitz Esq.
Facsimile: (646) 758 4226

Ladies and Gentlemen:

Reference is made to the Asset Purchase Agreement, dated as of September 16, 2008 (the "Agreement"), by and among Lehman Brothers Holdings Inc. ("LBH"), Lehman Brothers Inc. ("LBI"), LB 745 LLC ("745") and Barclays Capital Inc. ("Purchaser"). Each capitalized term used and not defined herein shall have the meaning ascribed to it in the Agreement. This letter agreement clarifies the intention of the parties with respect to certain provisions of the

Agreement and is binding on the parties hereto upon its execution and delivery.

1. Purchased Assets. The Purchased Assets means all of the assets of Seller used in connection with the Business (excluding the Excluded Assets), including the items set forth in clauses (a) through (s) of the definition of "Purchased Assets." Also included in the Purchased Assets are (a) the equity of Lehman Brothers Canada, Inc., Lehman Brothers Sudamerica SA and Lehman Brothers Uruguay SA, (b) the government securities trading and mortgage trading operations of LBI (but mortgage securities only to the extent referred to below) and (c) all prime brokerage accounts and securities lending operations of the Business (for the avoidance of doubt, other than those that are part of the IMD Business).

2. IMD Business. For purposes of the Agreement, the IMD Business consists of the asset management and the alternatives – private equity businesses of Seller and the Subsidiaries, but not the private investment management business of Seller and the Subsidiaries (other than the CTS (Corporate Cash) business). As a result, Excluded Assets include the asset management business, the alternatives-private equity business and the CTS (Corporate Cash) business and Purchased Assets include the private investment management business (other than the CTS (Corporate Cash) business). In connection with Section 9.1(e) of the Agreement, the Purchaser shall establish a retention program for certain employees of the private investment management business (other than the CTS (Corporate Cash) business).

3. Excluded Assets. Included in the Excluded Assets are (a) the mortgage servicing rights for Ginnie Mae guaranteed securities and (b) all assets and rights of the Lehman European entities in administration. Included in clause (h) of the definition of "Excluded Assets" are life insurance policies owned by Seller and its Subsidiaries. The reference to "third

affiliates
NY2119168610511532105 DOC173683 1037

WGM Comments - September 19, 2008 - 2:30 am

8 AM

CAS 9/19

The ~~other~~ items referred in
clause (d) of "Purchased Assets"
includes only those assets owned
by (b) and not any other
affiliate of LBI and only collateral
relating to short-term
positions of LBI;

all the Business

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*(Clause (i) of the definition of "Assumed Liabilities"
Includes only those assets owned by LBI and not any
other Affiliate of LBI)*

parties" in clause (i) of the definition of "Excluded Assets" includes any person, including Affiliates of Seller.

Solely 4. Assumed Liabilities. Clause (a) of the definition of "Assumed Liabilities" consists of all Liabilities ~~of Seller~~ incurred by Purchaser, after the Closing, in connection with the Business. Nothing in this Paragraph 4 is intended to modify Section 8.12 of the Agreement.

5. License. All marks containing the words "LEHMAN" or "LEHMAN BROTHERS" assigned under the Agreement shall be considered Licensed Marks under Section 8.9 of the Agreement. The license to use the Licensed Marks granted pursuant to Section 8.9 of the Agreement with respect to the investment banking and capital markets businesses of Seller and its Subsidiaries is limited to a term of 2 years from the Closing Date (without limiting the term of the licenses granted for use in connection with the IMD Business (including in respect of investment funds) or the winding up of any operations or businesses of Seller or any of its Subsidiaries). The licenses pursuant to Section 8.9 are not assignable or sublicensable, except that such licenses are assignable and sublicensable (i) for use in connection with IMD Business or any portion of the IMD Business, (ii) to Seller's Subsidiaries and (iii) to the purchaser of any other businesses of Seller and its Subsidiaries solely in connection with the winding up of any such businesses.

6. Long Positions. The Purchased Assets and Assumed Liabilities include hedges placed on the Long Positions that are entered into after the date of the Agreement and before Closing, but will not include any other types of hedges or derivatives (other than exchange-traded derivatives as specified in clause (d) of the definition of "Purchased Assets"). The reference to "government securities" in the definition of Long Positions includes securities of any government agency.

7. Subordinated Notes of LBI. The outstanding subordinated notes of LBI and the proceeds thereof are not Assumed Liabilities or Purchased Assets, and any Liabilities associated with such subordinated notes therefore are Excluded Liabilities.

8. [Residential Real Estate Mortgage Securities]. To facilitate the division of residential real estate mortgage securities referred to in clause (e) of the definition of Purchased Assets and clause (k) of the definition of Excluded Assets, Purchaser will acquire non-agency residential mortgage backed securities and manufactured housing securities (which are therefore considered Purchased Assets) and Seller will retain HELOC ABS, CDO, CLO, VFN, franchise loan, student loan [scratch and dent], second lien, and reverse mortgage backed securities (which are therefore considered Excluded Assets), in each case as will be further allocated by the parties.

9. Breakup Fee. 745 is jointly and severally liable with LBHI and LBI for Seller's obligations under the Agreement to pay the Breakup Fee and Expense Reimbursement (each of which has the meaning ascribed to it in the Breakup Fee and Competing Bid Order).

10. Excluded Cash Assets and Retained Cash. All cash, cash equivalents, bank deposits or similar cash items of Seller and its Subsidiaries are Excluded Assets, other than the "Retained Cash," which is a Purchased Asset. The "Retained Cash" is \$700 million in cash, cash equivalents, bank deposits or similar cash items (rather than \$1.3 billion), plus the cash

or between or among my Seller
and/or any ~~subsidiary~~ Subsidiary of LBTI

Nothing herein shall
affect rights or
obligations under the
Transaction Services Agreement.

Amount received from closing out Long Positions, less the cash amount expended to close out
Short Positions.

LBTI or

Netting from

11. Payables, Deposits and Receivables. No payables or deposits shall be
Assumed Liabilities, except to the extent relating to a Purchased Contract. No receivables shall
be Purchased Assets, except to the extent relating to a Purchased Contract.

12. Intercompany Obligations. Except as expressly contemplated by this
Letter, the Agreement or the Transaction Services Agreement, Purchased Assets and Assumed
Liabilities shall not include any intercompany receivables, payables or other obligations of Seller
or its Subsidiaries.

13. Eagle Energy as Excluded Asset. The equity interests and assets of Eagle
Energy Management LLC, including the assets of the energy marketing and services business of
Lehman Brothers Commodity Services, Inc., are Excluded Assets (other than Purchased Assets).

14. Schedule 12.3. Following the Closing, the parties shall reasonably agree
to an allocation of the purchased price (including the Assumed Liabilities) among the Purchased
Assets and set forth such allocation on a Schedule 12.3.

15. Risk of Loss of Artwork. During such period that Purchaser has the right
to possess the artwork following the Closing pursuant to Section 8.16 of the Agreement,
Purchaser shall bear the risk of loss for such artwork. In the event that any artwork is damaged
or lost during such period, Purchaser shall pay to Seller an amount equal to the appraised value
(as determined by an independent, recognized appraiser) for such artwork, assuming such
artwork was not lost or damaged.

16. Records. The records referred to in Section 8.7 include all Documents that
are Purchased Assets. The joint administrators of the Lehman European entities are parties to
which records and personnel shall be made available in accordance with the terms of Section 8.7.

17. Subleases. Notwithstanding anything to the contrary contained in Sections
4.2(d), 4.3(c), 8.14 or any other provision of the Agreement, with respect to the leased premises
located in (i) 555 California Street, San Francisco, California ("SF Property"), (ii) 125 High
Street, Boston, Massachusetts ("Boston Property"), (iii) 190 S. LaSalle Street, Chicago, Illinois
("Chicago Property"), and (iv) 10250 Constellation Boulevard, Los Angeles, California ("LA
Property" and together with the SF Property, Boston Property and Chicago Property, the
"Sublease Properties"), the parties agree as follows:

(a) As contemplated in the Agreement, on the Closing Date, (i) the underlying
leases affecting the Chicago Property, the LA Property and the Boston Property shall be
assumed by Seller in connection with the bankruptcy proceedings and each of such leases
shall be assigned by Seller to Purchaser and Purchaser shall assume all of Seller's
obligations thereunder pursuant to assignment and assumption agreements mutually
acceptable to Seller and Purchaser, and (ii) the underlying lease affecting the SF Property
shall be assumed by Seller in connection with the bankruptcy proceedings.

(b) With respect to each Sublease Property, Seller and Purchaser shall, within

Holdback?

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language looks
right.

a commercially reasonable period of time following the Closing Date, negotiate in good faith, and thereafter execute and deliver, a sublease agreement reasonably acceptable to both Purchaser and Seller and subject to the terms of the applicable underlying lease, pursuant to which a portion of the demised premises under such underlying lease (such portion of the premises to be agreed upon by the parties) shall be subleased to (A) with respect to the SF Property, the Purchaser, and (B) with respect to the LA Property, Chicago Property and Boston Property, the Seller (regardless of the creditworthiness of Seller) or any person who purchases the IMD Business (provided that the entity entering into the sublease agreement as a subtenant shall be reasonably acceptable to the Purchaser) (the landlord under such sublease being referred to as the "Sublandlord" and the tenant under such sublease being referred to as the "Subtenant"), in each case, upon such terms as shall be mutually acceptable to the Sublandlord and Subtenant provided that (1) the Subtenant shall pay rent and other charges under such sublease agreement equal to its proportionate share of the rent and other charges payable by the Sublandlord to the landlord under the underlying lease (which proportionate share shall be based upon the relative square footage of the subleased space in proportion to the square footage of the overall demised space under the underlying lease), (2) the term of the sublease agreement shall be a period commencing on the Closing Date and ending on the day immediately preceding the expiration date of the underlying lease (as the same may be extended pursuant to the terms of the underlying lease), (3) any alterations or modifications which the Sublandlord and Subtenant mutually agree need to be made to the demised premises in order to segregate the subleased space from the remainder of the demised premises under the underlying lease shall be performed by the Sublandlord and the cost thereof (including the cost of any plans and specifications, drawings, permits, licenses, and other "soft" costs related thereto) shall be shared by the Sublandlord and Subtenant in proportion to the square footage of their respective spaces. Prior to the execution and delivery of the sublease agreement for a particular Sublease Property, subject to reasonable security procedures and giving due regard to regulatory considerations (e.g., segregation) including the right to relocate such employees within the applicable premises, and for a commercially reasonable period after the Closing Date, (i) with respect to the SF Property, to the extent that Transferred Employees occupied any portion of the SF Property prior to Closing, such Transferred Employees shall be permitted to continue to occupy and use the SF Property to the same extent and for the same purposes as the SF Property was occupied by such Transferred Employees prior to the Closing; provided, that the foregoing shall be subject to Purchaser's ability to substitute a substantially similar number of new employees of Purchaser for any such Transferred Employees as provided in Paragraph 18 below, and (ii) with respect to each Sublease Property other than the SF Property, to the extent that Excluded Employees occupied any portion of such Sublease Property prior to Closing, such Excluded Employees shall be permitted to continue to occupy and use such Sublease Property to the same extent and for the same purposes as such Sublease Property was occupied by such Excluded Employees prior to the Closing; provided, that the foregoing shall be subject to Seller's ability to substitute a substantially similar number of new employees of Seller for any such Excluded Employees as provided in Paragraph 18 below. In each case described in clauses (i) and (ii) above, no rent or other payments shall be made to the party which is the tenant under the underlying lease until execution and delivery of the applicable sublease agreement at which time all rent calculated under the sublease

agreement for the period from the Commencement Date (which date shall be the Closing Date) through end of the month in which the sublease agreement is executed shall be paid to the Sublandlord contemporaneously with the execution and delivery of the sublease agreement.

(c) If any consent or approval from any landlord under an underlying lease is required pursuant to the terms of the underlying lease in order to effectuate the applicable sublease agreement and/or to the extent that any landlord under an underlying lease has recapture and/or termination rights that would be triggered by the proposed sublease arrangement to be reflected in the applicable sublease agreement, Seller and Purchaser will cooperate and use commercially reasonable efforts in obtaining such consent to the applicable sublease agreement and/or obtaining waivers from the landlord with respect to any such recapture and/or termination rights and shall otherwise comply in all respects with the terms and provisions of the underlying lease in connection with the execution and delivery of the applicable sublease agreement.

18. Deferred Transfers. Notwithstanding anything to the contrary contained in the Agreement, (a) the parties agree that during the nine month period after the Closing Date that Excluded Employees are permitted to occupy and use real property subject to a Transferred Real Property Lease in accordance with Section 8.11(f) of the Agreement, that the Seller and its Affiliates shall also be permitted to substitute a substantially similar number of new employees of Seller or its Affiliates for any such Excluded Employees, and that any such new employees of Seller or its Affiliates shall be permitted to occupy and use such real property to the same extent and on the same basis as the Excluded Employees in accordance with Section 8.11(f), and (b) the parties agree that during the nine month period after the Closing Date that Transferred Employees are permitted to occupy and use real property is not subject to a Transferred Real Property Lease in accordance with Section 8.11(g) of the Agreement, that the Purchaser and its Affiliates shall also be permitted to substitute a substantially similar number of new employees of Purchaser or its Affiliates for any such Transferred Employees, and that any such new employees of Purchaser or its Affiliates shall be permitted to occupy and use such real property to the same extent and on the same basis as the Transferred Employees in accordance with Section 8.11(g).

19. 745 Seventh Avenue. The parties acknowledge that there is no mortgage encumbering 745's interest in the premises at 745 Seventh Avenue, New York, New York and that, notwithstanding Section 10.1(d) of the Agreement, only the \$500,000,000 promissory note made by 745 in favor of its Affiliate will be fully repaid and extinguished.

20. Prorations. Notwithstanding Section 12.2 of the Agreement, to the extent that the parties are unable to agree upon all customary prorations for the Purchased Assets as of the Closing, they shall cooperate in finalizing all such prorations within thirty (30) days following the Closing Date.

21. Schedules. Corrected Schedules 1.1(a) and 1.1(b) are attached hereto.

This letter agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of New

York applicable to contracts made and to be performed entirely within that state. This letter agreement may be executed in any number of counterparts (including by facsimile), each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

[Remainder of page intentionally left blank]

Sincerely,

BARCLAYS CAPITAL INC.

By: _____
Name:
Title:

Agreed to and accepted as of the date first written above:

LEHMAN BROTHERS HOLDINGS INC.

By: _____
Name:
Title:

LEHMAN BROTHERS INC.

By: _____
Name:
Title:

LB 745 LLC

By: _____
Name:
Title:

DEPOSITION

EXHIBIT 34

Administrator

Sent: Tuesday, March 24, 2009 10:40 PM

From: Keller, Andy R [akeller@stblaw.com]
Sent: Friday, September 19, 2008 4:34 PM (GMT)
To: Berkenfeld, Steven [sberkenf@lehman.com]
Subject: FW: LEHMAN– Barclays: Current Draft of Clarifying / Amendatory Letter
Attach: Clarification Letter #1916861.DOC;Clarification Letter #1916861.DOC

From: robert.messineo@weil.com [mailto:robert.messineo@weil.com]
Sent: Friday, September 19, 2008 12:09 PM
To: viewkow@cgsb.com; dlcunwand@cgsb.com; dmclaughlin@cgsb.com; rdavis@cgsb.com; summersc@sullcrom.com;
archie.cox@barclayscapital.com; Finley, John G; Keller, Andy R; tori.life@weil.com; jacqueline.marcus@weil.com;
david.murgio@weil.com; michael.tubowitz@weil.com; harvey.miller@weil.com
Subject: LEHMAN– Barclays: Current Draft of Clarifying / Amendatory Letter
Importance: High

Please see the current draft. The exhibit must be revised to reflect the latest deal with DTC; this is being distributed separately.
A copy marked to show the changes made from the last draft we distributed is attached.
Please distribute to others who should have it.

Marked copy:

Robert L. Messineo
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Telephone = 212-310-8835
Telecopy = 212-833-3862



6/22/2009

10279028

WGM Comments - September 19, 2008 - Noon

(*[Letterhead of Barclays]*)

September [__], 2008

Lehman Brothers Holdings Inc.
Lehman Brothers Inc.
LB 745 LLC
Attn: Steven Berkenfeld, Esq.
Facsimile: (646) 758-4226

Ladies and Gentlemen:

Reference is made to the Asset Purchase Agreement, dated as of September 16, 2008 (the "Agreement"), by and among Lehman Brothers Holdings Inc. ("LBI"), Lehman Brothers Inc. ("LB1"), LB 745 LLC ("745") and Barclays Capital Inc. ("Purchaser"). Each capitalized term used and not defined herein shall have the meaning ascribed to it in the Agreement. This letter agreement clarifies the intention of the parties with respect to certain provisions of the Agreement and supplements in certain respects the agreements of the parties stated therein and shall amend the Agreement to the extent necessary so as to be consistent with this letter, and is binding on the parties hereto upon its execution and delivery.

1. Purchased Assets. The Purchased Assets means all of the assets of Seller used primarily in the Business or necessary for the operation of the Business (in each case, excluding the Excluded Assets), including the items set forth in clauses (a) through (s) of the definition of "Purchased Assets." Also included in the Purchased Assets are (a) the equity of Lehman Brothers Canada, Inc., Lehman Brothers Sudamerica SA and Lehman Brothers Uruguay SA, (b) the government securities trading and mortgage trading operations of LBI (but mortgage securities only to the extent referred to below) and (c) all prime brokerage accounts, repos and securities lending operations of the Business (for the avoidance of doubt, other than those that are part of the IMD Business). The categories of securities referred to in clause (d) of the "Purchased Assets" definition in the Agreement include only securities in such categories owned by LBI and not any other affiliate of LBI and only collateralized short-term agreement relating to short-term positions of LBI. Purchased Intellectual Properties includes Intellectual Property Rights, Software and Technology, wherever in the world held by Holdings or any of its Subsidiaries, that are used or necessary for the conduct by Purchaser of the Business.

2. IMD Business. For purposes of the Agreement, the IMD Business consists of the asset management and the alternatives – private equity businesses of Seller and the Subsidiaries, but not the private investment management business of Seller and the Subsidiaries (other than the CTS (Corporate Cash) business. As a result, Excluded Assets include the asset management business, the alternatives-private equity business and the CTS (Corporate Cash) business and Purchased Assets and the Business include the private investment management business (other than the CTS (Corporate Cash) business) ("PIM"). The employees

of PIM of the Closing Date shall become Transferred Employees and will be entitled to benefits on a basis consistent with that provided by Section 9.1 of the Agreement for other Transferred Employees, all in accordance with the terms and conditions of such sections, and, for purposes of Section 9.1(c), the Purchaser shall establish a retention program for Transferred Employees of PIM, substantially comparable to the retention program for other Transferred Employees contemplated by Section 9.1, the cost of which shall be in addition to the cost referred to in Section 9.1.

3. **Excluded Assets.** Included in the Excluded Assets are (a) the mortgage servicing rights for Ginnie Mae guaranteed securities and (b) all assets and rights of the Lehman companies that have or do come under governmental conservatorship or administration. Included in clause (h) of the definition of "Excluded Assets" are life insurance policies owned by Seller and its Subsidiaries. Clause (i) of the definition of "Assumed Liabilities" includes only liabilities associated with assets owned by LBI and not assets owned by any Affiliate of LBI. The reference to "third parties" in clause (i) of the definition of "Excluded Assets" includes any person, including Affiliates of Seller.

4. **Assumed Liabilities.** Clause (a) of the definition of "Assumed Liabilities" consists solely of all Liabilities incurred by Purchaser, after the Closing, in connection with the Business. Nothing in this Paragraph 4 is intended to modify Section 8.12 of the Agreement.

5. **License.** All marks containing the words "LEHMAN" or "LEHMAN BROTHERS" assigned under the Agreement shall be considered Licensed Marks under Section 8.9 of the Agreement. The license to use the Licensed Marks granted pursuant to Section 8.9 of the Agreement with respect to the investment banking and capital markets businesses of Seller and its Subsidiaries is limited to a term of 2 years from the Closing Date (without limiting the term of the license granted for use in connection with the IMD Business (including in respect of investment funds) or in connection with winding up of any operations or businesses of Seller or any of its Subsidiaries). The licenses pursuant to Section 8.9 are not assignable or sublicensable, except that such licenses are assignable and sublicensable (i) for use in connection with IMD Business or any portion of the IMD Business and (ii) to Seller's Subsidiaries or a purchaser of any other businesses of Seller and its Subsidiaries, solely, for use in connection with the winding up of any such businesses.

6. **Long Positions.** The Purchased Assets and Assumed Liabilities include hedges placed on the Long Positions that are entered into after the date of the Agreement and before Closing, but will not include any other types of hedges or derivatives (other than exchange-traded derivatives as specified in clause (d) of the definition of "Purchased Assets" but not over-the-counter derivatives such as TBAs, other than TBA MS, and spot and forward currency contracts). The reference to "government securities" in the definition of Long Positions includes securities of any government agency.

7. **Subordinated Notes of LBI.** The outstanding subordinated notes of LBI and the proceeds thereof are not Assumed Liabilities or Purchased Assets, and any Liabilities associated with such subordinated notes therefore are Excluded Liabilities.

8. **Residential Real Estate Mortgage Securities.** To facilitate the division of residential real estate mortgage securities referred to in clause (c) of the definition of Purchased Assets and clause (k) of the definition of Excluded Assets between Purchaser and Seller, Purchaser will acquire non-agency residential mortgage backed securities and manufactured housing securities (which are therefore considered Purchased Assets) and Seller will retain HELOC, ABS, CDO, CLO, VFN, franchise loan, student loan, [scratch and dent], second lien, and reverse mortgage backed securities (which are therefore considered Excluded Assets), in each case as will be further allocated by the parties.

9. **Breakup Fee.** TPG is jointly and severally liable with LBHI and LBI for Seller's obligations under the Agreement to pay the Breakup Fee and Expense Reimbursement (each of which has the meaning ascribed to it in the Breakup Fee and Competing Bid Order).

10. **Excluded Cash Assets and Retained Cash.** All cash, cash equivalents, bank deposits or similar cash items of Seller and its Subsidiaries are Excluded Assets, other than the "Retained Cash," which is a Purchased Asset. The "Retained Cash" is \$700 million in cash, cash equivalents, bank deposits or similar cash items (rather than \$1.3 billion), plus the cash amount received from closing out Long Positions, less the cash amount expended to close out Short Positions.

11. **Payables, Deposits and Receivables.** No payables or deposits of a Seller or Subsidiary shall be Assumed Liabilities, except to the extent resulting from a Purchased Contract. No receivables shall be Purchased Assets, except to the extent resulting from a Purchased Contract.

12. **Intercompany Obligations.** Except as expressly contemplated by this Letter, the Agreement or the Transition Services Agreement, Purchased Assets and Assumed Liabilities shall not include any intercompany receivables or payables or other obligations, respectively, of Seller or its Subsidiaries or between or among any Seller or any of LBHI or any Subsidiary of LBHI. It is understood that nothing contained in this letter shall affect the rights or obligations of the parties to the Transition Services Agreement contemplated by the Agreement.

13. **Eagle Energy as Excluded Asset.** The equity interests and assets of Lehman Brothers Commodity Services, Inc., including the equity of, as well as the assets of the energy marketing and services business of Eagle Energy Management LLC, are Excluded Assets (rather than Purchased Assets).

14. **Schedule 12.3.** Following the Closing, the parties shall reasonably agree to an allocation of the purchase price (including the Assumed Liabilities) among the Purchased Assets for tax purposes and set forth such allocation on a Schedule 12.3 to be signed by the parties.

15. **Risk of Loss of Artwork.** During such period that Purchaser has the right to possess the artwork following the Closing pursuant to Section 8.16 of the Agreement, Purchaser shall bear the risk of loss for such artwork. In the event that any artwork is damaged or lost during such period, Purchaser shall pay to Seller an amount equal to the loss, consistent with the insured appraised value (as determined by an independent, recognized appraiser) for such artwork, assuming such artwork had not been lost or damaged.

16. **Records.** The records referred to in Section 8.7 include all Documents that are Purchased Assets. The joint administrators of the Lehman European entities are parties to which records and personnel shall be made available in accordance with the terms of Section 8.7.

17. **Subleases.** Notwithstanding anything to the contrary contained in Sections 4.2(d), 4.3(c), 8.14 or any other provision of the Agreement, with respect to the leased premises located in (i) 555 California Street, San Francisco, California ("SF Property"), (ii) 125 High Street, Boston, Massachusetts ("Boston Property"), (iii) 190 S. LaSalle Street, Chicago, Illinois ("Chicago Property"), and (iv) 10250 Constellation Boulevard, Los Angeles, California ("LA Property" and together with the SF Property, Boston Property and Chicago Property, the "Sublease Properties"), the parties agree as follows:

(a) As contemplated in the Agreement, on the Closing Date, (i) the underlying leases affecting the Chicago Property, the LA Property and the Boston Property shall be assumed by Seller in connection with the bankruptcy proceedings and each of such leases shall be assigned by Seller to Purchaser and Purchaser shall assume all of Seller's obligations thereunder pursuant to assignment and assumption agreements mutually acceptable to Seller and Purchaser, and (ii) the underlying lease affecting the SF Property shall be assumed by Seller in connection with the bankruptcy proceedings.

(b) With respect to each Sublease Property, Seller and Purchaser shall, within a commercially reasonable period of time following the Closing Date, negotiate in good faith, and thereafter execute and deliver, a sublease agreement reasonably acceptable to both Purchaser and Seller and subject to the terms of the applicable underlying lease, pursuant to which a portion of the demised premises under such underlying lease (such portion of the premises to be agreed upon by the parties) shall be subleased to (A) with respect to the SF Property, the Purchaser, and (B) with respect to the LA Property, Chicago Property and Boston Property, the Seller (regardless of the creditworthiness of Seller) or any person who purchases the IMD Business (provided that the entity entering into the sublease agreement as a subtenant shall be reasonably acceptable to the Purchaser) (the landlord under such sublease being referred to as the "Sublandlord" and the tenant under such sublease being referred to as the "Subtenant"), in each case, upon such terms as shall be mutually acceptable to the Sublandlord and Subtenant provided that (1) the Subtenant shall pay rent and other charges under such sublease agreement equal to its proportionate share of the rent and other charges payable by the Sublandlord to the landlord under the underlying lease (which proportionate share shall be based upon the relative square footage of the subleased space in proportion to the square footage of the overall demised space under the underlying lease), (2) the term of the sublease agreement shall be a period commencing on the Closing Date and ending on the day immediately preceding the expiration date of the underlying lease (as the same may be extended pursuant to the terms of the underlying lease), (3) any alterations or modifications which the Sublandlord and Subtenant mutually agree need to be made to the demised premises in order to segregate the subleased space from the remainder of the demised premises under the underlying lease shall be performed by the Sublandlord and the cost thereof (including the cost of any plans and specifications, drawings, permits, licenses, and other "soft" costs related thereto) shall be shared by the Sublandlord and Subtenant in proportion to the square footage of their respective spaces. Prior to the

execution and delivery of the sublease agreement for a particular Sublease Property, subject to reasonable security procedures and giving due regard to regulatory considerations (e.g., segregation) including the right to relocate such employees within the applicable premises, and for a commercially reasonable period after the Closing Date, (i) with respect to the SF Property, to the extent that Transferred Employees occupied any portion of the SF Property prior to Closing, such Transferred Employees shall be permitted to continue to occupy and use the SF Property to the same extent and for the same purposes as the SF Property was occupied by such Transferred Employees prior to the Closing; provided, that the foregoing shall be subject to Purchaser's ability to substitute a substantially similar number of new employees of Purchaser for any such Transferred Employees as provided in Paragraph 18 below, and (ii) with respect to each Sublease Property other than the SF Property, to the extent that Excluded Employees occupied any portion of such Sublease Property prior to Closing, such Excluded Employees shall be permitted to continue to occupy and use such Sublease Property to the same extent and for the same purposes as such Sublease Property was occupied by such Excluded Employees prior to the Closing; provided, that the foregoing shall be subject to Seller's ability to substitute a substantially similar number of new employees of Seller for any such Excluded Employees as provided in Paragraph 18 below. In each case described in clauses (i) and (ii) above, no rent or other payments shall be made to the party which is the tenant under the underlying lease until execution and delivery of the applicable sublease agreement at which time all rent calculated under the sublease agreement for the period from the Commencement Date (which date shall be the Closing Date) through end of the month in which the sublease agreement is executed shall be paid to the Sublandlord contemporaneously with the execution and delivery of the sublease agreement.

(c) If any consent or approval from any landlord under an underlying lease is required pursuant to the terms of the underlying lease in order to effectuate the applicable sublease agreement and/or to the extent that any landlord under an underlying lease has recapture and/or termination rights that would be triggered by the proposed sublease arrangement to be reflected in the applicable sublease agreement, Seller and Purchaser will cooperate and use commercially reasonable efforts in obtaining such consent to the applicable sublease agreement and/or obtaining waivers from the landlord with respect to any such recapture and/or termination rights and shall otherwise comply in all respects with the terms and provisions of the underlying lease in connection with the execution and delivery of the applicable sublease agreement.

18. Deferred Transfers. Notwithstanding anything to the contrary contained in the Agreement, (a) the parties agree that during the nine month period after the Closing Date that Excluded Employees are permitted to occupy and use real property subject to a Transferred Real Property Lease in accordance with Section 8.11(f) of the Agreement, that the Seller and its Affiliates shall also be permitted to substitute a substantially similar number of new employees of Seller or its Affiliates for any such Excluded Employees, and that any such new employees of Seller or its Affiliates shall be permitted to occupy and use such real property to the same extent and on the same basis as the Excluded Employees in accordance with Section 8.11(f), and (b) the parties agree that during the nine month period after the Closing Date that Transferred Employees are permitted to occupy and use real property is not subject to a Transferred Real

Property Lease in accordance with Section 8.11(g) of the Agreement, that the Purchaser and its Affiliates shall also be permitted to substitute a substantially similar number of new employees of Purchaser or its Affiliates for any such Transferred Employees, and that any such new employees of Purchaser or its Affiliates shall be permitted to occupy and use such real property to the same extent and on the same basis as the Transferred Employees in accordance with Section 8.11(g).

19. **745 Seventh Avenue.** The parties acknowledge that there is no mortgage encumbering 745's interest in the premises at 745 Seventh Avenue, New York, New York and that, notwithstanding Section 10.1(d) of the Agreement, only the \$500,000,000 promissory note made by 745 in favor of its Affiliate will be fully repaid and extinguished.

20. **Prorations.** Notwithstanding Section 12.2 of the Agreement, to the extent that the parties are unable to agree upon all customary prorations for the Purchased Assets as of the Closing, they shall cooperate in finalizing all such prorations within thirty (30) days following the Closing Date.

21. **Schedules.** Corrected Schedules 1.1(a) and 1.1(b) are attached hereto.

21. **Arrangements Regarding DTCC.** The parties have agreed to the arrangements with respect to accounts maintained by LBI with DTCC set forth on Exhibit I hereto.

This letter agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within that state. This letter agreement may be executed in any number of counterparts (including by facsimile), each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

[Remainder of page intentionally left blank.]

Sincerely,

BARCLAYS CAPITAL INC.

By: _____
Name:
Title:

Agreed to and accepted as of the date first written above:

LEHMAN BROTHERS HOLDINGS INC.

By: _____
Name:
Title:

LEHMAN BROTHERS INC.

By: _____
Name:
Title:

LB 745 LLC

By: _____
Name:
Title:

The following is based on an earlier preliminary draft and does not reflect the current agreement in principle; it is included only to facilitate inclusion of the final version.

EXHIBIT I: Liabilities Related to Clearing Securities Trades (DTCC)

(a) Assumed Liabilities shall include Assumed Depositary Liabilities and Excluded Liabilities shall include Excluded Depositary Liabilities (each as defined below).

(b) On September 19, 2008, Purchaser informed DTC that, if it is selected as the successful bidder to acquire the Business, Purchaser will guaranty the open trades and amounts due to DTCC on the accounts and subaccounts ~~of the 0074 Accounts of DTC~~ which roll up into the 0074 Accounts, effective as of the opening of the trading day on Monday, September 21, 2008, in an aggregate net amount not to exceed \$250 million.

(c) Sections 3.2 and 3.3 of the Agreement shall hereby be amended and restated in their entirety as follows:

3.2 Payment of Cash Amount. On the Closing Date, Purchaser shall pay to Seller an amount equal to the Cash Amount, ~~less~~ \$250 million, which shall be paid by wire transfer of immediately available funds into an account designated by Seller.

3.3 Adjustments.

(a) As soon as practicable, Seller shall determine, and notify Purchaser of, the amount of the Excluded Depositary Liabilities. On the Business Day following the date on which Seller notifies Purchaser of such amount, Purchaser shall pay to Seller an amount equal to \$250 million, ~~less~~ the Excluded Depositary Liabilities, ~~which shall be paid by wire transfer of immediately available funds into an account designated by Seller; provided, however, that, if the Excluded Depositary Liabilities equals or exceeds \$250 million, Purchaser shall not be required to pay any amount to Seller pursuant to this Section 3.3(a) [and Purchaser shall be entitled to a credit in the amount of such excess against amounts payable by Purchaser to Seller under the Transition Services Agreement]. The amount of any payment to be made pursuant to this Section 3.3(a) shall bear interest from and including the Closing Date to but excluding the date of payment at a rate per annum equal to the rate of interest published from time to time by the *Wall Street Journal* as the "prime rate" at JP Morgan Chase during the period from the Closing Date to the date of payment. Such interest shall be payable at the same time as the payment to which it relates and shall be calculated daily on the basis of a year of three hundred sixty five (365) days and the actual number of days elapsed.~~

(b) Promptly following the first anniversary of the Closing Date, Purchaser shall determine with respect to each Position (long or short, including

¹ Can this amount be calculated with certainty? Consider whether dispute resolution provisions are necessary.

repos), that was part of the Purchased Assets and was sold on or prior to such first anniversary, the profit or loss realized from such sale (such profit or loss determined by reference to LBI's mark (book value) for such Position as of the date hereof). Purchaser shall provide reasonable supporting information to Seller with respect to such calculation of profit or loss. If the aggregate amount of all such profits exceeds the aggregate amount of all such losses (i) by up to \$500 million, Purchaser shall promptly pay Seller such net amount, or (ii) by more than \$500 million, Purchaser shall promptly pay Seller the sum of \$500 million plus one-half of the excess of such net amount over \$500 million (but in no event shall Purchaser pay Seller more than \$750 million pursuant to this Section 3.3(b)). For purposes of this Section 3.3(b), the time value of money shall be disregarded and no interest shall be deemed earned.

3.4 Definitions. For purposes of this Article III, the terms set forth below shall have the following definitions:

- (a) "074 Accounts" means [REDACTED] and Subaccounts in the draft of DTCC prior to the Closing in respect of LBHT's 074 Assets (not 074).
- (b) "Assumed Depository Liabilities" means the net amount of all Depository Liabilities incurred in respect of trades made subsequent to the Closing on 074 Accounts [REDACTED]
- (c) "Depository Liabilities" means Liabilities of LBHT and its Subsidiaries to DTCC in respect of 074 Accounts.
- (d) "DTCC" means the Depository Trust & Clearing Corporation.
- (e) "Excluded Depository Liabilities" means all net amount of all Depository Liabilities, other than Assumed Depository Liabilities. Excluded Depository Liabilities shall include Depository Liabilities incurred in respect of (A) trades made prior to the Closing on all 074 Accounts and (B) trades made subsequent to the Closing on 074 Accounts that constitute Excluded Assets.

Section 3.2 & 3.3 Escrow Alternative

3.2 Payment of Cash Amount. On the Closing Date, Purchaser shall pay (a) \$250 million of the Cash Amount to the Escrow Agent and (b) the remainder of the Cash Amount to Seller, each of which shall be paid by wire transfer of immediately available funds into an account designated by the Escrow Agent or Seller, as applicable.

?? Adjustments.

(a) As soon as practicable, Seller shall determine, and notify the Escrow Agent of, the amount of the Excluded Depositary Liabilities. On the Business Day following the date on which Seller notifies the Escrow Agent of such net amount, the Escrow Agent shall pay, by wire transfer of immediately available funds into an account designated by Seller or Purchaser, as applicable:

- (i) to Purchaser an amount equal to the Excluded Depositary Liabilities; and
- (ii) to Seller the remainder of the Escrow Funds.

provided: however, that, if the Excluded Depositary Liabilities equals or exceeds \$250 million, the Escrow Agent shall pay to Purchaser all \$250 million of Escrow Funds [and Purchaser shall be entitled to a credit in the amount of such excess against amounts payable by Purchaser to Seller under the Transition Services Agreement]. The amount of any payment to be made pursuant to this Section 3.3(a) shall bear interest from and including the Closing Date to but excluding the date of payment at a rate per annum equal to the rate of interest published from time to time by the *Wall Street Journal* as the "prime rate" at JP Morgan Chase during the period from the Closing Date to the date of payment. Such interest shall be payable at the same time as the payment to which it relates and shall be calculated daily on the basis of a year of three hundred sixty five (365) days and the actual number of days elapsed.

(b) Promptly following the first anniversary of the Closing Date, Purchaser shall determine with respect to each Position (long or short, including repos), that was part of the Purchased Assets and was sold on or prior to such first anniversary, the profit or loss realized from such sale (such profit or loss determined by reference to LBI's mark (book value) for such Position as of the date hereof). Purchaser shall provide reasonable supporting information to Seller with respect to such calculation of profit or loss. If the aggregate amount of all such profits exceeds the aggregate amount of all such losses (i) by up to \$500 million, Purchaser shall promptly pay Seller such net amount, or (ii) by more than \$500 million, Purchaser shall promptly pay Seller the sum of \$500 million plus

one-half of the excess of such net amount over \$500 million (but in no event shall Purchaser pay Seller more than \$750 million pursuant to this Section 3.3(b)). For purposes of this Section 3.3(b), the time value of money shall be disregarded and no interest shall be deemed earned.

WGM Comments - September 19, 2008 - 2:30 am Noon

[*Letterhead of Barclays*]

September 1, 2008

**Lehman Brothers Holdings Inc.
Lehman Brothers Inc.
LB 745 LLC
Attn: Steven Berknerfeld, Esq
Facsimile: (646) 758-4240**

Ladies and Gentlemen:

Reference is made to the Asset Purchase Agreement, dated as of September 16, 2008 (the "Agreement"), by and among Lehman Brothers Holdings Inc. ("LBHI"), Lehman Brothers Inc. ("LBI"), LB 745 LLC ("745") and Barclays Capital Inc. ("Purchaser"). Each capitalized term used and not defined herein shall have the meaning ascribed to it in the Agreement. This letter agreement clarifies the intention of the parties with respect to certain provisions of the Agreement and ~~supplements in certain respects the agreements of the parties stated therein and shall amend the Agreement to the extent necessary so as to be consistent with this letter, and is binding on the parties hereto upon its execution and delivery.~~

1. Purchased Assets. The Purchased Assets means all of the assets of Seller used in connection primarily in the Business or necessary for the operation of the Business (in each case, excluding the Excluded Assets), including the items set forth in clauses (a) through (s) of the definition of "Purchased Assets." Also included in the Purchased Assets are (a) the equity of Lehman Brothers Canada, Inc., Lehman Brothers Sudamerica SA and Lehman Brothers Uruguay SA, (b) the government securities trading and mortgage trading operations of LBI (but mortgage securities only to the extent referred to below) and (c) all prime brokerage accounts, repos and securities lending operations of the Business (for the avoidance of doubt, other than those that are part of the IMD Business). The categories of securities referred to in clause (d) of the "Purchased Assets" definition in the Agreement include only securities in such categories owned by LBI and not any other affiliate of LBI and only collateralized short-term agreements relating to short-term positions of LBI. Purchased Intellectual Properties includes Intellectual Property Rights, Software and Technology, wherever in the world held by Holdings or any of its Subsidiaries, that are used or necessary for the conduct by Purchaser of the Business.

2. **IMD Business**. For purposes of this Agreement, the IMD Business consists of the asset management and the alternatives – private equity businesses of Seller and the Subsidiaries, but not the private investment management business of Seller and the Subsidiaries (other than the CTS (Corporate Cash) business). As a result, Excluded Assets include the asset management business, the alternatives-private equity business and the CTS (Corporate Cash) business and Purchased Assets and the Business include the private investment management business (other than the CTS (Corporate Cash) business). In connection with

~~Section 9.1(e) of the Agreement ("PIM"). The employees of PIM of the Closing Date shall become Transferred Employees and will be entitled to benefits on a basis consistent with that provided by Section 9.1 of the Agreement for other Transferred Employees, all in accordance with the terms and conditions of such sections, and, for purposes of Section 9.1(g), the Purchaser shall establish a retention program for certain employees of the private investment management business (other than the CTS (Corporate Cash) business). Transferred Employees of PIM, substantially comparable to the retention program for other Transferred Employees contemplated by Section 9.1, the cost of which shall be in addition to the cost referred to in Section 9.1.~~

3. Excluded Assets. Included in the Excluded Assets are (a) the mortgage servicing rights for Ginnie Mae guaranteed securities and (b) all assets and rights of the Lehman European entities ~~in companies that have or do come under governmental conservatorship or administration~~. Included in clause (i) of the definition of "Excluded Assets" are life insurance policies owned by Seller and its Subsidiaries. Clause (i) of the definition of "Assumed Liabilities" includes only liabilities associated with assets owned by LBI and not assets owned by any Affiliate of LBI. The reference to "third parties" in clause (i) of the definition of "Excluded Assets" includes any person, including Affiliates of Seller.

4. Assumed Liabilities. Clause (a) of the definition of "Assumed Liabilities" consists solely of all Liabilities of Seller incurred by Purchaser, after the Closing, in connection with the Business. Nothing in this Paragraph 4 is intended to modify Section 8.12 of the Agreement.

5. License. All marks containing the words "LEHMAN" or "LEHMAN BROTHERS" assigned under the Agreement shall be considered Licensed Marks under Section 8.9 of the Agreement. The license to use the Licensed Marks granted pursuant to Section 8.9 of the Agreement with respect to the investment banking and capital markets businesses of Seller and its Subsidiaries is limited to a term of 2 years from the Closing Date (without limiting the term of the license granted for use in connection with the IMD Business (including in respect of investment funds) or the unwinding in connection with winding up of any operations or businesses of Seller or any of its Subsidiaries). The licenses pursuant to Section 8.9 are not assignable or sublicensable, except that such licenses are assignable and sublicensable (i) for use in connection with IMD Business or any portion of the IMD Business; and (ii) to Seller's Subsidiaries and (iii) to the ~~purchaser~~ a purchaser of any other businesses of Seller and its Subsidiaries, solely, ~~for use~~ in connection with the winding up of any such businesses.

6. Long Positions. The Purchased Assets and Assumed Liabilities include hedges placed on the Long Positions that are entered into after the date of the Agreement and before Closing, but will not include any other types of hedges or derivatives (other than exchange-traded derivatives as specified in clause (d) of the definition of "Purchased Assets" but not over-the-counter derivatives such as TBAs, other than TBAMs, and spot and forward currency contracts). The reference to "government securities" in the definition of Long Positions includes securities of any government agency.

7. Subordinated Notes of LBI. The outstanding subordinated notes of LBI and the proceeds thereof are not Assumed Liabilities or Purchased Assets, and any Liabilities associated with such subordinated notes therefore are Excluded Liabilities.

8. ~~fResidential Real Estate Mortgage Securities.~~ To facilitate the division of residential real estate mortgage securities referred to in clause (e) of the definition of Purchased Assets and clause (k) of the definition of Excluded Assets ~~between Purchaser and Seller,~~ Purchaser will acquire non-agency residential mortgage backed securities and manufactured housing securities (which are therefore considered Purchased Assets) and Seller will retain HELOC, ABS, CDO, CLO, VFN, franchise loan, student loan, [scratch and dent], second lien, and reverse mortgage backed securities (which are therefore considered Excluded Assets), in each case as will be further allocated by the parties.}

9. ~~Breakup Fee.~~ 745 is jointly and severally liable with LBHI and LBI for Seller's obligations under the Agreement to pay the Breakup Fee and Expense Reimbursement (each of which has the meaning ascribed to it in the Breakup Fee and Competing Bid Order).

10. ~~Excluded Cash Assets and Retained Cash.~~ All cash, cash equivalents, bank deposits or similar cash items of Seller and its Subsidiaries are Excluded Assets, other than the "Retained Cash," which is a Purchased Asset. The "Retained Cash" is \$700 million in cash, cash equivalents, bank deposits or similar cash items (rather than \$1.3 billion), plus the cash amount received from closing out Long Positions, less the cash amount expended to close out Short Positions.

11. ~~Payables, Deposits and Receivables.~~ No payables or deposits ~~of a Seller or Subsidiary~~ shall be Assumed Liabilities, except to the extent relating to ~~resulting from a~~ Purchased Contract. No receivables shall be Purchased Assets, except to the extent relating to ~~resulting from a~~ Purchased Contract.

12. ~~Intercompany Obligations.~~ Except as expressly contemplated by this Letter, the Agreement or the Transition Services Agreement, Purchased Assets and Assumed Liabilities shall not include any intercompany receivables, or payables or other obligations, respectively, of Seller or its Subsidiaries ~~or between or among any Seller or any of LBHI or any Subsidiary of LBHI.~~ It is understood that nothing contained in this letter shall affect the rights or obligations of the parties to the Transition Services Agreement contemplated by the Agreement.

13. ~~Eagle Energy as Excluded Asset.~~ The equity interests and assets of Eagle Energy Management LLC, Lehman Brothers Commodity Services, Inc., including the ~~equity of~~ as well as the assets of the energy marketing and services business of Lehman Brothers Commodity Services, Inc.; Eagle Energy Management LLC, are Excluded Assets (rather than Purchased Assets).

14. ~~Schedule 12.3.~~ Following the Closing, the parties shall reasonably agree to an allocation of the ~~purchased~~ purchase price (including the Assumed Liabilities) among the Purchased Assets ~~for tax purposes~~ and set forth such allocation on a Schedule 12.3.12.3 to be signed by the parties.

15. ~~Risk of Loss of Artwork.~~ During such period that Purchaser has the right to possess the artwork following the Closing pursuant to Section 8.16 of the Agreement, Purchaser shall bear the risk of loss for such artwork. In the event that any artwork is damaged or lost during such period, Purchaser shall pay to Seller an amount equal to the ~~loss, consistent~~

~~with the insured appraised value (as determined by an independent, recognized appraiser) for such artwork, assuming such artwork was had not been lost or damaged.~~

16. **Records.** The records referred to in Section 8.7 include all Documents that are Purchased Assets. The joint administrators of the Lehman European entities are parties to which records and personnel shall be made available in accordance with the terms of Section 8.7.

17. **Subleases.** Notwithstanding anything to the contrary contained in Sections 4.2(d), 4.3(c), 8.14 or any other provision of the Agreement, with respect to the leased premises located in (i) 555 California Street, San Francisco, California ("SF Property"), (ii) 125 High Street, Boston, Massachusetts ("Boston Property"), (iii) 190 S. LaSalle Street, Chicago, Illinois ("Chicago Property"), and (iv) 10250 Constellation Boulevard, Los Angeles, California ("LA Property" and together with the SF Property, Boston Property and Chicago Property, the "Sublease Properties"), the parties agree as follows:

(a) As contemplated in the Agreement, on the Closing Date, (i) the underlying leases affecting the Chicago Property, the LA Property and the Boston Property shall be assumed by Seller in connection with the bankruptcy proceedings and each of such leases shall be assigned by Seller to Purchaser and Purchaser shall assume all of Seller's obligations thereunder pursuant to assignment and assumption agreements mutually acceptable to Seller and Purchaser, and (ii) the underlying lease affecting the SF Property shall be assumed by Seller in connection with the bankruptcy proceedings.

(b) With respect to each Sublease Property, Seller and Purchaser shall, within a commercially reasonable period of time following the Closing Date, negotiate in good faith, and thereafter execute and deliver, a sublease agreement reasonably acceptable to both Purchaser and Seller and subject to the terms of the applicable underlying lease, pursuant to which a portion of the demised premises under such underlying lease (such portion of the premises to be agreed upon by the parties) shall be subleased to (A) with respect to the SF Property, the Purchaser, and (B) with respect to the LA Property, Chicago Property and Boston Property, the Seller (regardless of the creditworthiness of Seller) or any person who purchases the IMD Business (provided that the entity entering into the sublease agreement as a subtenant shall be reasonably acceptable to the Purchaser) (the landlord under such sublease being referred to as the "Sublandlord" and the tenant under such sublease being referred to as the "Subtenant"), in each case, upon such terms as shall be mutually acceptable to the Sublandlord and Subtenant provided that (1) the Subtenant shall pay rent and other charges under such sublease agreement equal to its proportionate share of the rent and other charges payable by the Sublandlord to the landlord under the underlying lease (which proportionate share shall be based upon the relative square footage of the subleased space in proportion to the square footage of the overall demised space under the underlying lease), (2) the term of the sublease agreement shall be a period commencing on the Closing Date and ending on the day immediately preceding the expiration date of the underlying lease (as the same may be extended pursuant to the terms of the underlying lease), (3) any alterations or modifications which the Sublandlord and Subtenant mutually agree need to be made to the demised premises in order to segregate the subleased space from the remainder of the demised premises under the underlying lease shall be performed by the Sublandlord and

the cost thereof (including the cost of any plans and specifications, drawings, permits, licenses, and other "soft" costs related thereto) shall be shared by the Sublandlord and Subtenant in proportion to the square footage of their respective spaces. Prior to the execution and delivery of the sublease agreement for a particular Sublease Property, subject to reasonable security procedures and giving due regard to regulatory considerations (e.g., segregation) including the right to relocate such employees within the applicable premises, and for a commercially reasonable period after the Closing Date, (i) with respect to the SF Property, to the extent that Transferred Employees occupied any portion of the SF Property prior to Closing, such Transferred Employees shall be permitted to continue to occupy and use the SF Property to the same extent and for the same purposes as the SF Property was occupied by such Transferred Employees prior to the Closing; provided, that the foregoing shall be subject to Purchaser's ability to substitute a substantially similar number of new employees of Purchaser for any such Transferred Employees as provided in Paragraph 18 below, and (ii) with respect to each Sublease Property other than the SF Property, to the extent that Excluded Employees occupied any portion of such Sublease Property prior to Closing, such Excluded Employees shall be permitted to continue to occupy and use such Sublease Property to the same extent and for the same purposes as such Sublease Property was occupied by such Excluded Employees prior to the Closing; provided, that the foregoing shall be subject to Seller's ability to substitute a substantially similar number of new employees of Seller for any such Excluded Employees as provided in Paragraph 18 below. In each case described in clauses (i) and (ii) above, no rent or other payments shall be made to the party which is the tenant under the underlying lease until execution and delivery of the applicable sublease agreement at which time all rent calculated under the sublease agreement for the period from the Commencement Date (which date shall be the Closing Date) through end of the month in which the sublease agreement is executed shall be paid to the Sublandlord contemporaneously with the execution and delivery of the sublease agreement.

(c) If any consent or approval from any landlord under an underlying lease is required pursuant to the terms of the underlying lease in order to effectuate the applicable sublease agreement and/or to the extent that any landlord under an underlying lease has recapture and/or termination rights that would be triggered by the proposed sublease arrangement to be reflected in the applicable sublease agreement, Seller and Purchaser will cooperate and use commercially reasonable efforts in obtaining such consent to the applicable sublease agreement and/or obtaining waivers from the landlord with respect to any such recapture and/or termination rights and shall otherwise comply in all respects with the terms and provisions of the underlying lease in connection with the execution and delivery of the applicable sublease agreement.

18. Deferred Transfers. Notwithstanding anything to the contrary contained in the Agreement, (a) the parties agree that during the nine month period after the Closing Date that Excluded Employees are permitted to occupy and use real property subject to a Transferred Real Property Lease in accordance with Section 8.11(f) of the Agreement, that the Seller and its Affiliates shall also be permitted to substitute a substantially similar number of new employees of Seller or its Affiliates for any such Excluded Employees, and that any such new employees of Seller or its Affiliates shall be permitted to occupy and use such real property to the same extent

and on the same basis as the Excluded Employees in accordance with Section 8.11(f), and (b) the parties agree that during the nine month period after the Closing Date that Transferred Employees are permitted to occupy and use real property is not subject to a Transferred Real Property Lease in accordance with Section 8.11(g) of the Agreement, that the Purchaser and its Affiliates shall also be permitted to substitute a substantially similar number of new employees of Purchaser or its Affiliates for any such Transferred Employees, and that any such new employees of Purchaser or its Affiliates shall be permitted to occupy and use such real property to the same extent and on the same basis as the Transferred Employees in accordance with Section 8.11(g).

19. 745 Seventh Avenue. The parties acknowledge that there is no mortgage encumbering 745's interest in the premises at 745 Seventh Avenue, New York, New York and that, notwithstanding Section 10.1(j) of the Agreement, only the \$500,000,000 promissory note made by 745 in favor of its Affiliate will be fully repaid and extinguished.

20. Prorations. Notwithstanding Section 12.2 of the Agreement, to the extent that the parties are unable to agree upon all customary prorations for the Purchased Assets as of the Closing, they shall cooperate in finalizing all such prorations within thirty (30) days following the Closing Date.

21. Schedules. Corrected Schedules 1.1(a) and 1.1(b) are attached hereto.

21. Arrangements Regarding DTCC. The parties have agreed to the arrangements with respect to accounts maintained by LBI with DTCC set forth on Exhibit I hereto.

This letter agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within that state. This letter agreement may be executed in any number of counterparts (including by facsimile), each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

[Remainder of page intentionally left blank.]

Sincerely,

BARCLAYS CAPITAL INC.

By: _____
Name:
Title:

Agreed to and accepted as of the date first written above:

LEHMAN BROTHERS HOLDINGS INC.

By: _____
Name:
Title:

LEHMAN BROTHERS INC.

By: _____
Name:
Title:

LB 745 LLC

By: _____
Name:
Title:

The following is based on an earlier preliminary draft and does not reflect the current agreement in principle; it is included only to facilitate inclusion of the final version.

EXHIBIT I: Liabilities Related to Clearing Securities Trades (DTCC)

(a) Assumed Liabilities shall include Assumed Depository Liabilities and Excluded Liabilities shall include Excluded Depository Liabilities (each as defined below).

(b) On September 19, 2008, Purchaser informed DTC that if it is selected as the successful bidder to acquire the Business, Purchaser will guaranty the open trades and amounts due in DTCC on the accounts and subaccounts that were in the DTCC Books which roll up into the 0074 Accounts effective as of the opening of the trading day on Monday, September 21, 2008, in an aggregate net amount not to exceed \$250 million.

(c) Sections 3.2 and 3.3 of the Agreement shall hereby be amended and restated in their entirety as follows:

3.2 Payment of Cash Amount. On the Closing Date, Purchaser shall pay to Seller an amount equal to the Cash Amount, less \$250 million, which shall be paid by wire transfer of immediately available funds into an account designated by Seller.

3.3 Adjustments.

(a) As soon as practicable, Seller shall determine and notify Purchaser of the amount of the Excluded Depository Liabilities. On the Business Day following the date on which Seller notifies Purchaser of such amount, Purchaser shall pay to Seller an amount equal to \$250 million, less the Excluded Depository Liabilities, if which shall be paid by wire transfer of immediately available funds into an account designated by Seller, provided, however, that if the Excluded Depository Liabilities equals or exceeds \$250 million, Purchaser shall not be required to pay any amount to Seller pursuant to this Section 3.3(a) and Purchaser shall be entitled to a credit in the amount of such excess against amounts payable by Purchaser to Seller under the Transition Services Agreement. The amount of any payment to be made pursuant to this Section 3.3(a) shall bear interest from and including the Closing Date to but excluding the date of payment at a rate per annum equal to the rate of interest published from time to time by the Wall Street Journal as the "prime rate" at JP Morgan Chase during the period from the Closing Date to the date of payment. Such interest shall be payable at the same time as the payment to which it relates and shall be calculated daily on the basis of a year of three hundred sixty five (365) days and the actual number of days elapsed.

(b) Promptly following the first anniversary of the Closing Date, Purchaser shall determine with respect to each Position (long or short, including

1. Can this amount be calculated with certainty? Consider whether dispute resolution provisions are necessary.

(reps) that was part of the Purchased Assets and was sold on or prior to such first anniversary, the profit or loss realized from such sale (such profit or loss determined by reference to LBHI's mark (book value) for such Position as of the date hereof). Purchaser shall provide reasonable supporting information to Seller with respect to such calculation of profit or loss. If the aggregate amount of all such profits exceeds the aggregate amount of all such losses (i) by up to \$500 million, Purchaser shall promptly pay Seller such net amount, or (ii) by more than \$500 million, Purchaser shall promptly pay Seller the sum of \$500 million plus one-half of the excess of such net amount over \$500 million (but in no event shall Purchaser pay Seller more than \$750 million pursuant to this Section 3.3(b)). For purposes of this Section 3.3(b), the time value of money shall be disregarded and no interest shall be deemed earned.

3.4 Definitions. For purposes of this Article III, the terms set forth below shall have the following definitions:

- (a) "074 Accounts" means [REDACTED] of DTCC prior to the Closing on all 074 Accounts that constitute Excluded Assets.
- (b) "Assumed Depository Liabilities" means the net amount of all Depository Liabilities incurred in respect of trades made subsequent to the Closing on 074 Accounts that constitute Excluded Assets.
- (c) "Depository Liabilities" means Liabilities of LBHI and its Subsidiaries to DTCC in respect of 074 Accounts.
- (d) "DTCC" means the Depository Trust & Clearing Corporation.
- (e) "Excluded Depository Liabilities" means all net amount of all Depository Liabilities other than Assumed Depository Liabilities. Excluded Depository Liabilities shall include Depository Liabilities incurred in respect of (A) trades made prior to the Closing on all 074 Accounts and (B) trades made subsequent to the Closing on 074 Accounts that constitute Excluded Assets.

Section 3.2 & 3.3 Escrow Alternative

3.2 Payment of Cash Amount. On the Closing Date, Purchaser shall pay (a) \$250 million of the Cash Amount to the Escrow Agent and (b) the remainder of the Cash Amount to Seller, each of which shall be paid by wire transfer of immediately available funds into an account designated by the Escrow Agent or Seller, as applicable.

3.3 Adjustments.

(a) As soon as practicable, Seller shall determine, and notify the Escrow Agent of, the amount of the Excluded Depositary Liabilities. On the Business Day following the date on which Seller notifies the Escrow Agent of such net amount, the Escrow Agent shall pay, by wire transfer of immediately available funds into an account designated by Seller or Purchaser, as applicable:

(i) to Purchaser an amount equal to the Excluded Depositary Liabilities; and

(ii) to Seller the remainder of the Escrow Funds,

provided, however, that if the Excluded Depositary Liabilities equals or exceeds \$250 million, the Escrow Agent shall pay to Purchaser all \$250 million of Escrow Funds (and Purchaser shall be entitled to a credit in the amount of such excess against amounts payable by Purchaser to Seller under the Transition Services Agreement). The amount of any payment to be made pursuant to this Section 3.3(a) shall bear interest from and including the Closing Date to but excluding the date of payment at a rate per annum equal to the rate of interest published from time to time by the *Wall Street Journal* as the "prime rate" at JP Morgan Chase during the period from the Closing Date to the date of payment. Such interest shall be payable at the same time as the payment to which it relates and shall be calculated daily on the basis of a year of three hundred sixty five (365) days and the actual number of days elapsed.

(b) Promptly following the first anniversary of the Closing Date, Purchaser shall determine with respect to each Position (long or short, including repos), that was part of the Purchased Assets and was sold on or prior to such first anniversary, the profit or loss realized from such sale (such profit or loss determined by reference to LBI's mark (book value) for such Position as of the date hereof). Purchaser shall provide reasonable supporting information to Seller with respect to such calculation of profit or loss. If the aggregate amount of all such profits exceeds the aggregate amount of all such losses (i) by up to \$500 million, Purchaser shall promptly pay Seller such net amount, or (ii) by more than \$500 million, Purchaser shall promptly pay Seller the sum of \$500 million plus

one-half of the excess of such net amount over \$500 million (but in no event shall Purchaser pay Seller more than \$750 million pursuant to this Section 3.3(b)). For purposes of this Section 3.3(b), the time value of money shall be disregarded and no interest shall be deemed earned.

Document comparison done by DeltaView on Friday, September 19, 2008 12:03:48 PM
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Document 1	pcdocs://ny2/1916861/5
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Moved cell	[REDACTED]
Split/Merged cell	[REDACTED]
Padding cell	[REDACTED]

Statistics	Count
Insertions	67
Deletions	23
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	94

DEPOSITION

EXHIBIT 35

Unknown

Sent: Tuesday, March 24, 2009 10:43 PM

From: david.murgio@weil.com [david.murgio@weil.com]
Sent: Friday, September 19, 2008 9:15 PM (GMT)
To: PDowd@stblaw.com [PDowd@stblaw.com]; pmartelli@stblaw.com
[pmartelli@stblaw.com]; Berkenfeld, Steven [sberkenf@lehman.com];
akeller@stblaw.com [akeller@stblaw.com]; jfinley@stblaw.com [jfinley@stblaw.com];
vlewkow@cgsh.com [vlewkow@cgsh.com]; dleinwand@cgsh.com
[dleinwand@cgsh.com]; feldsteinh@sullcrom.com [feldsteinh@sullcrom.com];
ClaytonW@sullcrom.com [ClaytonW@sullcrom.com]; Richard.Smith3@barcap.com
[Richard.Smith3@barcap.com]; Jonathan.Hughes@barcap.com
[Jonathan.Hughes@barcap.com]; Genirs, Kevin [Kevin.Genirs@lehman.com];
jori.fife@weil.com [Jori.Fife@weil.com]; michael.lubowitz@weil.com
[michael.lubowitz@weil.com]; robert.messineo@weil.com [robert.messineo@weil.com];
rod.miller@weil.com [rod.miller@weil.com]; Shai.Waisman@weil.com
[Shai.Waisman@weil.com]; james.grogan@weil.com [james.grogan@weil.com];
jane.mcdonald@weil.com [jane.mcdonald@weil.com]; harvey.miller@weil.com
[harvey.miller@weil.com]
Subject: Revised Clarification Letter
Attach: Clarification Letter #1916861.DOC;Clarification Letter #1916861.DOC

Please find attached a revised version of the Clarification Letter reflecting our conversation this afternoon. The blackline is marked to reflect changes from the draft previously circulated by Cleary.

Regards,

David

David Murgio
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Tel: (212) 310 8764
Fax: (212) 310 8007
e-mail: david.murgio@weil.com



WGM Draft September 19, 2008 5:00 pm

BARCLAYS CAPITAL INC.

September ___, 2008

Lehman Brothers Holdings Inc.
Lehman Brothers Inc.
LB 745 LLC
Attn: Steven Berkenfeld, Esq
Facsimile: (646) 758-4226

Ladies and Gentlemen:

Reference is made to the Asset Purchase Agreement, dated as of September 16, 2008 (as previously amended, the “Agreement”), by and among Lehman Brothers Holdings Inc. (“LBHI”), Lehman Brothers Inc. (“LBI”), LB 745 LLC (“745”) and Barclays Capital Inc. (“Purchaser”). Each capitalized term used and not defined herein shall have the meaning ascribed to it in the Agreement. This letter agreement clarifies the intention of the parties with respect to certain provisions of the Agreement and supplements in certain respects the agreements of the parties stated therein and shall amend the Agreement to the extent necessary so as to be consistent with this letter, and is binding on the parties hereto upon its execution and delivery.

I. Purchased Assets; Excluded Assets.

(a) The Purchased Assets means all of the assets of Seller used primarily in the Business or necessary for the operation of the Business (in each case, excluding the Excluded Assets), including the items set forth in clauses (a) through (d) and (f) through (o) and (q) through (s) of the definition of “Purchased Assets,” plus, with respect to securities of LBI, shall also include municipal securities, residential mortgage securities and other securities of which a summary description, by category, is reflected in Exhibit A hereto; it being understood that the Long Positions referred to in clause (d) of Purchased Assets do not have a book value of approximately \$70 million. The categories of securities included among the “Purchased Assets” include only securities in such categories owned by LBI and not any other Affiliate of LBI and, with respect to collateralized short-term agreements, only those collateralized short agreements relating to short positions of LBI. Also included in the Purchased Assets are (a) the equity of Lehman Brothers Canada, Inc., Lehman Brothers Sudamerica SA and Lehman Brothers Uruguay SA, (b) the government securities trading and mortgage trading operations of LBI and (c) all prime brokerage accounts, and repurchase agreement and securities lending operations of the Business (for the avoidance of doubt, other than those that are part of the IMD Business). Purchased Intellectual Properties includes Intellectual Property Rights, Software and Technology, wherever in the world held by Holdings or

any of its Subsidiaries, that are primarily used or necessary for the conduct by Purchaser of the Business and for conduct of the commodities business. For the avoidance of doubt, the Business includes the Sellers' commodities business.

(b) The Excluded Assets shall mean the assets of Seller and its Subsidiaries referred to in clauses (a) and (c) through (j) and (l) through (q) and, except as otherwise provided below, any cash, cash equivalents, bank deposits or similar cash items of LBHI and its Subsidiaries. In lieu of the assets referred to in clause (k) of the definition of "Excluded Assets," the following shall be Excluded Assets: All of the investments held by Sellers or their Subsidiaries in collateralized debt obligations, collateralized loan obligations, similar asset-backed securities and corporate loans, other than those subject to the Barclays Repurchase Agreement (as hereinafter defined). Also included in the Excluded Assets are (a) the mortgage servicing rights for Ginnie Mae guaranteed securities and (b) all assets and rights of the Lehman companies (other than Seller or TFS) that have or do come under governmental conservatorship or administration, except as notified by the administrator to LBI from time to time. Included in clause (h) of the definition of "Excluded Assets" are life insurance policies owned by Seller and its Subsidiaries. For the avoidance of doubt, the equity interests and assets of Lehman Brothers Commodity Services, Inc., including the equity of, as well as the assets of the energy marketing and services business of Eagle Energy Management LLC, are Excluded Assets (rather than Purchased Assets). The reference to "third parties" in clause (i) of the definition of "Excluded Assets" includes any person, including Affiliates of Seller. Section 1.1(h) of the definition of Excluded Liabilities is hereby amended to remove the following clause: "other than customer account insurance supplemental to SIPC coverage included in the Business."

2. IMD Business. For purposes of the Agreement, the IMD Business consists of the asset management and the alternatives – private equity businesses of Seller and the Subsidiaries, but not the private investment management business of Seller and the Subsidiaries (other than the CTS (Corporate Cash) business. As a result, Excluded Assets include the asset management business, the alternatives-private equity business and the CTS (Corporate Cash) business, and Purchased Assets and the Business include the private investment management business (other than the CTS (Corporate Cash) business). The employees of PIM of the Closing Date shall become Transferred Employees. For the avoidance of doubt, Purchaser's obligations pursuant to Section 9.1(c) of the Agreement did not contemplate the additional Transferred Employees that result from the inclusion of the private investment management business of Seller (the "PIM Business") in the pool of Transferred Employees. Accordingly, Purchaser shall increase the amount available to be awarded as bonuses to Transferred Employees to take into account the addition of the Transferred Employees of the PIM Business. The Transferred Employees of the PIM Business will be treated in a manner consistent with the principles set forth in Section 9.1(c). The Purchased Assets include forgivable notes issued by the Transferred Employees of the PIM Business to Seller. Purchaser agrees to pay any proceeds it receives in respect of such notes to Seller if and when received.

3. Assumed Liabilities. Clause (a) of the definition of "Assumed Liabilities" consists solely of all Liabilities incurred by Purchaser, after the Closing, in connection with the

Business. Nothing in this Paragraph 4 is intended to modify Section 8.12 of the Agreement and no Liabilities described in clause (i) shall be "Assumed Liabilities."

4. License. All marks containing the words "LEHMAN" or "LEHMAN BROTHERS" assigned under the Agreement shall be considered Licensed Marks under Section 8.9 of the Agreement. The license to use the Licensed Marks granted pursuant to Section 8.9 of the Agreement with respect to the investment banking and capital markets businesses of Seller and its Subsidiaries is limited to a term of 2 years from the Closing Date (without limiting the term of the license granted for use in connection with the IMD Business (including in respect of investment funds) or in connection with winding up of any operations or businesses of Seller or any of its Subsidiaries). The licenses pursuant to Section 8.9 are not assignable or sublicensable, except that such licenses are assignable and sublicensable (i) for use in connection with IMD Business or any portion of the IMD Business and (ii) to Seller's Subsidiaries or a purchaser of any other businesses of Seller and its Subsidiaries, in each case solely for use in connection with the winding up of any such businesses.

5. Long Positions. The Purchased Assets and Assumed Liabilities include hedges placed on the Long Positions that are entered into after the date of the Agreement and before Closing, but will not include any other types of hedges or derivatives (other than exchange-traded derivatives as specified in clause (d) of the definition of "Purchased Assets" and TBA MS, but not any other over-the-counter derivatives such as spot and forward currency contracts). The reference to "government securities" in the definition of Long Positions includes securities of any government agency.

6. Subordinated Notes of LBI. The outstanding subordinated notes of LBI and the proceeds thereof are not Assumed Liabilities or Purchased Assets, and any Liabilities associated with such subordinated notes therefore are Excluded Liabilities.

7. Breakup Fee. 745 is jointly and severally liable with LBII and LBI for Seller's obligations under the Agreement to pay the Breakup Fee and Expense Reimbursement (each of which has the meaning ascribed to it in the Breakup Fee and Competing Bid Order).

8. Certain Cash Proceeds. Any cash amount received from closing out Long Positions, less the cash amount expended to close out Short Positions, before the Closing, shall be delivered to Purchaser.

11. Payables, Deposits and Receivables. No payables or deposits of a Seller or Subsidiary shall be Assumed Liabilities, except to the extent resulting from a Purchased Contract. No receivables shall be Purchased Assets, except to the extent resulting from a Purchased Contract.

12. Intercompany Obligations. Except as expressly contemplated by this Letter, the Agreement or the Transition Services Agreement, Purchased Assets and Assumed Liabilities shall not include any intercompany receivables or payables or other obligations, respectively, of Seller or its Subsidiaries or between or among any Seller or any of LBII or any Subsidiary of LBII. It is understood that nothing contained in this letter shall affect the rights or obligations of the parties to the Transition Services Agreement contemplated by the Agreement.

13. Schedule 12.3. Following the Closing, the parties shall reasonably agree to an allocation of the purchase price (including the Assumed Liabilities) among the Purchased Assets for tax purposes and set forth such allocation on a Schedule 12.3 to be signed by the parties.

14. Barclays Repurchase Agreement. At the Closing, Purchaser and its Affiliates will release Seller and its Subsidiaries from any obligation under the September 18, 2008, repurchase arrangement among Purchaser and/or its Affiliates and LBI and/or its Affiliates.

15. Risk of Loss of Artwork. During such period that Purchaser has the right to possess the artwork following the Closing pursuant to Section 8.16 of the Agreement, Purchaser shall bear the risk of loss for such artwork. In the event that any artwork is damaged or lost during such period, Purchaser shall pay to Seller an amount equal to the loss, consistent with the ~~incurred appraised value~~ (as determined by an independent, recognized appraiser) for such artwork, assuming such artwork had not been lost or damaged.

16. Records. The records referred to in Section 8.7 include all Documents that are Purchased Assets and shall be considered to include all electronic documents, including e-mail. The joint administrators of the Lehman European entities are parties to which records and personnel shall be made available in accordance with the terms of Section 8.7.

17. Subleases. Notwithstanding anything to the contrary contained in Sections 4.2(d), 4.3(c), 8.14 or any other provision of the Agreement, with respect to the leased premises located in (i) 555 California Street, San Francisco, California ("SF Property"), (ii) 125 High Street, Boston, Massachusetts ("Boston Property"), (iii) 190 S. LaSalle Street, Chicago, Illinois ("Chicago Property"), and (iv) 10250 Constellation Boulevard, Los Angeles, California ("LA Property" and together with the SF Property, Boston Property and Chicago Property, the "Sublease Properties"), the parties agree as follows:

(a) As contemplated in the Agreement, on the Closing Date, (i) the underlying leases affecting the Chicago Property, the LA Property and the Boston Property shall be assumed by Seller in connection with the bankruptcy proceedings and each of such leases shall be assigned by Seller to Purchaser and Purchaser shall assume all of Seller's obligations thereunder pursuant to assignment and assumption agreements mutually acceptable to Seller and Purchaser, and (ii) the underlying lease affecting the SF Property shall be assumed by Seller in connection with the bankruptcy proceedings.

(b) With respect to each Sublease Property, Seller and Purchaser shall, within a commercially reasonable period of time following the Closing Date, negotiate in good faith, and thereafter execute and deliver, a sublease agreement reasonably acceptable to both Purchaser and Seller and subject to the terms of the applicable underlying lease, pursuant to which a portion of the demised premises under such underlying lease (such portion of the premises to be agreed upon by the parties) shall be subleased to (A) with respect to the SF Property, the Purchaser, and (B) with respect to the LA Property, Chicago Property and Boston Property, the Seller (regardless of the creditworthiness of Seller) or any person who purchases the IMD Business (provided that the entity entering

into the sublease agreement as a subtenant shall be reasonably acceptable to the Purchaser) (the landlord under such sublease being referred to as the "Sublandlord" and the tenant under such sublease being referred to as the "Subtenant"), in each case, upon such terms as shall be mutually acceptable to the Sublandlord and Subtenant provided that (1) the Subtenant shall pay rent and other charges under such sublease agreement equal to its proportionate share of the rent and other charges payable by the Sublandlord to the landlord under the underlying lease (which proportionate share shall be based upon the relative square footage of the subleased space in proportion to the square footage of the overall demised space under the underlying lease), (2) the term of the sublease agreement shall be a period commencing on the Closing Date and ending on the day immediately preceding the expiration date of the underlying lease (as the same may be extended pursuant to the terms of the underlying lease), (3) any alterations or modifications which the Sublandlord and Subtenant mutually agree need to be made to the demised premises in order to segregate the subleased space from the remainder of the demised premises under the underlying lease shall be performed by the Sublandlord and the cost thereof (including the cost of any plans and specifications, drawings, permits, licenses, and other "soft" costs related thereto) shall be shared by the Sublandlord and Subtenant in proportion to the square footage of their respective spaces. Prior to the execution and delivery of the sublease agreement for a particular Sublease Property, subject to reasonable security procedures and giving due regard to regulatory considerations (e.g., segregation) including the right to relocate such employees within the applicable premises, and for a commercially reasonable period after the Closing Date, (i) with respect to the SF Property, to the extent that Transferred Employees occupied any portion of the SF Property prior to Closing, such Transferred Employees shall be permitted to continue to occupy and use the SF Property to the same extent and for the same purposes as the SF Property was occupied by such Transferred Employees prior to the Closing; provided, that the foregoing shall be subject to Purchaser's ability to substitute a substantially similar number of new employees of Purchaser for any such Transferred Employees as provided in Paragraph 18 below, and (ii) with respect to each Sublease Property other than the SF Property, to the extent that Excluded Employees occupied any portion of such Sublease Property prior to Closing, such Excluded Employees shall be permitted to continue to occupy and use such Sublease Property to the same extent and for the same purposes as such Sublease Property was occupied by such Excluded Employees prior to the Closing; provided, that the foregoing shall be subject to Seller's ability to substitute a substantially similar number of new employees of Seller for any such Excluded Employees as provided in Paragraph 18 below. In each case described in clauses (i) and (ii) above, no rent or other payments shall be made to the party which is the tenant under the underlying lease until execution and delivery of the applicable sublease agreement at which time all rent calculated under the sublease agreement for the period from the Commencement Date (which date shall be the Closing Date) through end of the month in which the sublease agreement is executed shall be paid to the Sublandlord contemporaneously with the execution and delivery of the sublease agreement.

(c) If any consent or approval from any landlord under an underlying lease is required pursuant to the terms of the underlying lease in order to effectuate the applicable sublease agreement and/or to the extent that any landlord under an underlying lease has

recapture and/or termination rights that would be triggered by the proposed sublease arrangement to be reflected in the applicable sublease agreement. Seller and Purchaser will cooperate and use commercially reasonable efforts in obtaining such consent to the applicable sublease agreement and/or obtaining waivers from the landlord with respect to any such recapture and/or termination rights and shall otherwise comply in all respects with the terms and provisions of the underlying lease in connection with the execution and delivery of the applicable sublease agreement.

18. Deferred Transfers. Notwithstanding anything to the contrary contained in the Agreement, (a) the parties agree that during the nine month period after the Closing Date that Excluded Employees are permitted to occupy and use real property subject to a Transferred Real Property Lease in accordance with Section 8.11(f) of the Agreement, that the Seller and its Affiliates shall also be permitted to substitute a substantially similar number of new employees of Seller or its Affiliates for any such Excluded Employees, and that any such new employees of Seller or its Affiliates shall be permitted to occupy and use such real property to the same extent and on the same basis as the Excluded Employees in accordance with Section 8.11(f), and (b) the parties agree that during the nine month period after the Closing Date that Transferred Employees are permitted to occupy and use real property is not subject to a Transferred Real Property Lease in accordance with Section 8.11(g) of the Agreement, that the Purchaser and its Affiliates shall also be permitted to substitute a substantially similar number of new employees of Purchaser or its Affiliates for any such Transferred Employees, and that any such new employees of Purchaser or its Affiliates shall be permitted to occupy and use such real property to the same extent and on the same basis as the Transferred Employees in accordance with Section 8.11(g).

19. 745 Seventh Avenue. The parties acknowledge that there is no mortgage encumbering 745's interest in the premises at 745 Seventh Avenue, New York, New York and that, notwithstanding Section 10.1(d) of the Agreement, only the \$500,000,000 promissory note made by 745 in favor of its Affiliate will be fully repaid and extinguished.

1.1 20. Prorations. Notwithstanding Section 12.2 of the Agreement, to the extent that the parties are unable to agree upon all customary prorations for the Purchased Assets as of the Closing, they shall cooperate in finalizing all such prorations within thirty (30) days following the Closing Date.

21. Schedules. Corrected Schedules 1.1(a) and 1.1(b) are attached hereto.

21. Definition of Contract. Contract shall not include swap agreements.

This letter agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within that state. This letter agreement may be executed in any number of counterparts (including by facsimile), each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

Sincerely,

BARCLAYS CAPITAL INC.

By: _____
Name:
Title:

Agreed to and accepted as of the date first written above.

LEHMAN BROTHERS HOLDINGS INC.

By: _____
Name:
Title:

LEHMAN BROTHERS INC.

By: _____
Name:
Title:

LB 745 LLC

By: _____
Name:
Title:

CGSHWGM Comments Draft September 19, 2008 5:00 4:230pm

[*Letterhead of Barclays*]
BARCLAYS CAPITAL INC.

September [], 2008

Lehman Brothers Holdings Inc.
Lehman Brothers Inc.
LB 745 LLC
Attn: Steven Berkenfeld, Esq.
Facsimile: (646) 758-4226

Ladies and Gentlemen:

Reference is made to the Asset Purchase Agreement, dated as of September 16, 2008 (as previously amended, the "Agreement"), by and among Lehman Brothers Holdings Inc. ("LBHI"), Lehman Brothers Inc. ("LBI"), LB 745 LLC ("745") and Barclays Capital Inc ("Purchaser"). Each capitalized term used and not defined herein shall have the meaning ascribed to it in the Agreement. This letter agreement clarifies the intention of the parties with respect to certain provisions of the Agreement and supplements in certain respects the agreements of the parties stated therein and shall amend the Agreement to the extent necessary so as to be consistent with this letter, and is binding on the parties hereto upon its execution and delivery.

I. Purchased Assets; Excluded Assets.

(a) The Purchased Assets means all of the assets of Seller used primarily in the Business or necessary for the operation of the Business (in each case, excluding the Excluded Assets), including the items set forth in clauses (a) through (d) and (f) through (o) and (q) through (s) of the definition of "Purchased Assets," plus, with respect to securities of LBI, shall also include municipal securities, residential mortgage securities and other securities of which a summary description, by category, is reflected in Exhibit A hereto; it being understood that the Long Positions referred to in clause (d) of Purchased Assets do not have a book value of approximately \$70 million. The categories of securities included among the "Purchased Assets" include only securities in such categories owned by LBI and not any other Affiliate of LBI and, with respect to collateralized short-term agreements, only those collateralized short agreements relating to short positions of LBI. Also included in the Purchased Assets are (a) the equity of Lehman Brothers Canada, Inc., Lehman Brothers Sudamerica SA and Lehman Brothers Uruguay SA, (b) the government securities trading and mortgage trading operations of LBI (but mortgage securities only to the extent referred to below) and (c) all prime brokerage accounts, and repurchase agreements and agreement and securities lending operations of the Business (for the avoidance of doubt, other than those

that are part of the IMD Business). The categories of securities referred to in clause (d) of the "Purchased Assets" definition in the Agreement include only securities in such categories owned by LBI and not any other affiliate of LBI and with respect to collateralized short-term agreements, only those collateralized short-term agreements relating to short-term positions of LBI. Purchased Intellectual Properties includes Intellectual Property Rights, Software and Technology, wherever in the world held by Holdings or any of its Subsidiaries, that are primarily used or necessary for the conduct by Purchaser of the Business and for conduct of the commodities business. For the avoidance of doubt, the Business includes the Sellers' commodities business.

(b) The Excluded Assets shall mean the assets of Seller and its Subsidiaries referred to in clauses (a) and (c) through (j) and (l) through (q) and, except as otherwise provided below, any cash, cash equivalents, bank deposits or similar cash items of LBI and its Subsidiaries. In lieu of the assets referred to in clause (k) of the definition of "Excluded Assets," the following shall be Excluded Assets. All of the investments held by Sellers or their Subsidiaries in collateralized debt obligations, collateralized loan obligations, similar asset-backed securities and corporate loans, other than those subject to the Barclays Repurchase Agreement (as hereinafter defined). Also included in the Excluded Assets are (a) the mortgage servicing rights for Ginnie Mae guaranteed securities and (b) all assets and rights of the Lehman companies (other than Seller or 745) that have or do come under governmental conservatorship or administration, except as notified by the administrator to LBI from time to time. Included in clause (h) of the definition of "Excluded Assets" are life insurance policies owned by Seller and its Subsidiaries. For the avoidance of doubt, the equity interests and assets of Lehman Brothers Commodity Services, Inc., including the equity of, as well as the assets of the energy marketing and services business of Eagle Energy Management LLC, are Excluded Assets (rather than Purchased Assets). The reference to "third parties" in clause (i) of the definition of "Excluded Assets" includes any person, including Affiliates of Seller. Section 1.1(h) of the definition of Excluded Liabilities is hereby amended to remove the following clause: "other than customer account insurance supplemental to SIPC coverage included in the Business."

2. IMD Business. For purposes of the Agreement, the IMD Business consists of the asset management and the alternatives - private equity businesses of Seller and the Subsidiaries, but not the private investment management business of Seller and the Subsidiaries (other than the CTS (Corporate Cash) business. As a result, Excluded Assets include the asset management business, the alternatives-private equity business and the CTS (Corporate Cash) business, and Purchased Assets and the Business include the private investment management business (other than the CTS (Corporate Cash) business) ("PIM"). The employees of PIM of the Closing Date shall become Transferred Employees. For the avoidance of doubt, Purchaser's obligations pursuant to Section 9.1(c) of the Agreement did not contemplate the additional Transferred Employees that result from the inclusion of the private investment management business of Seller (the "PIM Business") in the pool of Transferred Employees. Accordingly, additional amounts shall be paid as bonuses in accordance with Section 9.1(c), and the employees of the PIM business Purchaser shall increase the amount available to be awarded as bonuses to Transferred Employees to take into account the addition of the Transferred Employees of the PIM Business. The Transferred Employees of the PIM

Business will be treated in a manner consistent with the principles set forth in Section 9.1(c). The Purchased Assets include forgivable notes issued by the Transferred Employees of the PIM Business to Seller. Purchaser agrees to pay any proceeds it receives in respect of such notes to Seller if and when received.

3. Excluded Assets. Included in the Excluded Assets are (a) the mortgage servicing rights for Ginnie Mae guaranteed securities and (b) all assets and rights of the Lehman companies (other than Seller or T45) that have or do come under governmental conservatorship or administration. Included in clause (h) of the definition of "Excluded Assets" are life insurance policies owned by Seller and its Subsidiaries. Clause (i) of the definition of "Assumed Liabilities" includes only liabilities associated with assets owned by LBI and not assets owned by any Affiliate of LBI. The reference to "third parties" in clause (i) of the definition of "Excluded Assets" includes any person, including Affiliates of Seller. Section 1.1(h) of the Agreement is hereby amended to remove the following clause: "other than customer account insurance supplemental to SIPC coverage indicated in the Disclosure".
Assumed Liabilities. Clause (a) of the definition of "Assumed Liabilities" consists solely of all Liabilities incurred by Purchaser, after the Closing, in connection with the Business. Nothing in this Paragraph 4 is intended to modify Section 8.12 of the Agreement, and no Liabilities described in clause (i) shall be "Assumed Liabilities."

5.4. License. All marks containing the words "LEHMAN" or "LEHMAN BROTHERS" assigned under the Agreement shall be considered Licensed Marks under Section 8.9 of the Agreement. The license to use the Licensed Marks granted pursuant to Section 8.9 of the Agreement with respect to the investment banking and capital markets businesses of Seller and its Subsidiaries is limited to a term of 2 years from the Closing Date (without limiting the term of the license granted for use in connection with the IMD Business (including in respect of investment funds) or in connection with winding up of any operations or businesses of Seller or any of its Subsidiaries). The licenses pursuant to Section 8.9 are not assignable or sublicensable, except that such licenses are assignable and sublicensable (i) for use in connection with IMD Business or any portion of the IMD Business and (ii) to Seller's Subsidiaries or a purchaser of any other businesses of Seller and its Subsidiaries, in each case solely for use in connection with the winding up of any such businesses.

6.5. Long Positions. The Purchased Assets and Assumed Liabilities include hedges placed on the Long Positions that are entered into after the date of the Agreement and before Closing, but will not include any other types of hedges or derivatives (other than exchange-traded derivatives as specified in clause (d) of the definition of "Purchased Assets" and TBA MS, but not any other over-the-counter derivatives such as spot and forward currency contracts). The reference to "government securities" in the definition of Long Positions includes securities of any government agency.

7.6. Subordinated Notes of LBI. The outstanding subordinated notes of LBI and the proceeds thereof are not Assumed Liabilities or Purchased Assets, and any Liabilities associated with such subordinated notes therefore are Excluded Liabilities.

8. Residential Real Estate Mortgage Securities. To facilitate the division of residential real estate mortgage securities referred to in clause (e) of the definition of Purchased

Assets and clause (k) of the definition of Excluded Assets between Purchaser and Seller, Purchaser will acquire non-agency residential mortgage-backed securities and manufactured housing securities (which are therefore considered Purchased Assets) and Seller will retain HELOC, ABS, CDO, CLO, VFN, franchise loan, student loan, [scratch and dent], second lien, and reverse mortgage backed securities (which are therefore considered Excluded Assets), in each case as will be further allocated by the parties. [What is happening with scratch and dent?]

9.7. Breakup Fee. 745 is jointly and severally liable with LBHI and LBI for Seller's obligations under the Agreement to pay the Breakup Fee and Expense Reimbursement (each of which has the meaning ascribed to it in the Breakup Fee and Competing Bid Order).

40. Excluded Cash Assets and Retained Cash. All cash, cash equivalents, bank deposits or similar cash items of Seller and its Subsidiaries are Excluded Assets, other than the "Retained Cash," which is a Purchased Asset. The "Retained Cash" is \$700 million in cash, cash equivalents, bank deposits or similar cash items (rather than \$1.3 billion), plus the8. Certain Cash Proceeds. Any cash amount received from closing out Long Positions, less the cash amount expended to close out Short Positions, before the Closing, shall be delivered to Purchaser.

11. Payables, Deposits and Receivables. No payables or deposits of a Seller or Subsidiary shall be Assumed Liabilities, except to the extent resulting from a Purchased Contract. No receivables shall be Purchased Assets, except to the extent resulting from a Purchased Contract.

12. Intercompany Obligations. Except as expressly contemplated by this Letter, the Agreement or the Transition Services Agreement, Purchased Assets and Assumed Liabilities shall not include any intercompany receivables or payables or other obligations, respectively, of Seller or its Subsidiaries or between or among any Seller or any of LBHI or any Subsidiary of LBHI. It is understood that nothing contained in this letter shall affect the rights or obligations of the parties to the Transition Services Agreement contemplated by the Agreement.

13. Eagle Energy as Excluded Asset. The equity interests and assets of Lehman Brothers Commodity Services, Inc., including the equity of, as well as the assets of the energy marketing and services business of Eagle Energy Management LLC, are Excluded Assets (rather than Purchased Assets). 14. Schedule 12.3. Following the Closing, the parties shall reasonably agree to an allocation of the purchase price (including the Assumed Liabilities) among the Purchased Assets for tax purposes and set forth such allocation on a Schedule 12.3 to be signed by the parties.

14. Barclays Repurchase Agreement. At the Closing, Purchaser and its Affiliates will release Seller and its Subsidiaries from any obligation under the September 18, 2008, repurchase arrangement among Purchaser and/or its Affiliates and LBI and/or its Affiliates.

15. Risk of Loss of Artwork. During such period that Purchaser has the right to possess the artwork following the Closing pursuant to Section 8.16 of the Agreement, Purchaser shall bear the risk of loss for such artwork. In the event that any artwork is damaged or lost during such period, Purchaser shall pay to Seller an amount equal to the loss, consistent

with the insured appraised value (as determined by an independent, recognized appraiser) for such artwork, assuming such artwork had not been lost or damaged.

16. **Records.** The records referred to in Section 8.7 include all Documents that are Purchased Assets and shall be considered to include all electronic documents, including e-mail. The joint administrators of the Lehman European entities are parties to which records and personnel shall be made available in accordance with the terms of Section 8.7.

17. **Subleases.** Notwithstanding anything to the contrary contained in Sections 4.2(d), 4.3(c), 8.14 or any other provision of the Agreement, with respect to the leased premises located in (i) 555 California Street, San Francisco, California ("SF Property"), (ii) 125 High Street, Boston, Massachusetts ("Boston Property"), (iii) 190 S. LaSalle Street, Chicago, Illinois ("Chicago Property"), and (iv) 10250 Constellation Boulevard, Los Angeles, California ("LA Property" and together with the SF Property, Boston Property and Chicago Property, the "Sublease Properties"), the parties agree as follows:

(a) As contemplated in the Agreement, on the Closing Date, (i) the underlying leases affecting the Chicago Property, the LA Property and the Boston Property shall be assumed by Seller in connection with the bankruptcy proceedings and each of such leases shall be assigned by Seller to Purchaser and Purchaser shall assume all of Seller's obligations thereunder pursuant to assignment and assumption agreements mutually acceptable to Seller and Purchaser, and (ii) the underlying lease affecting the SF Property shall be assumed by Seller in connection with the bankruptcy proceedings.

(b) With respect to each Sublease Property, Seller and Purchaser shall, within a commercially reasonable period of time following the Closing Date, negotiate in good faith, and thereafter execute and deliver, a sublease agreement reasonably acceptable to both Purchaser and Seller and subject to the terms of the applicable underlying lease, pursuant to which a portion of the demised premises under such underlying lease (such portion of the premises to be agreed upon by the parties) shall be subleased to (A) with respect to the SF Property, the Purchaser, and (B) with respect to the LA Property, Chicago Property and Boston Property, the Seller (regardless of the creditworthiness of Seller) or any person who purchases the IMD Business (provided that the entity entering into the sublease agreement as a subtenant shall be reasonably acceptable to the Purchaser) (the landlord under such sublease being referred to as the "Sublandlord" and the tenant under such sublease being referred to as the "Subtenant"), in each case, upon such terms as shall be mutually acceptable to the Sublandlord and Subtenant provided that (1) the Subtenant shall pay rent and other charges under such sublease agreement equal to its proportionate share of the rent and other charges payable by the Sublandlord to the landlord under the underlying lease (which proportionate share shall be based upon the relative square footage of the subleased space in proportion to the square footage of the overall demised space under the underlying lease), (2) the term of the sublease agreement shall be a period commencing on the Closing Date and ending on the day immediately preceding the expiration date of the underlying lease (as the same may be extended pursuant to the terms of the underlying lease), (3) any alterations or modifications which the Sublandlord and Subtenant mutually agree need to be made to the demised premises in order to segregate the subleased space from the remainder of the

demised premises under the underlying lease shall be performed by the Sublandlord and the cost thereof (including the cost of any plans and specifications, drawings, permits, licenses, and other "soft" costs related thereto) shall be shared by the Sublandlord and Subtenant in proportion to the square footage of their respective spaces. Prior to the execution and delivery of the sublease agreement for a particular Sublease Property, subject to reasonable security procedures and giving due regard to regulatory considerations (e.g., segregation) including the right to relocate such employees within the applicable premises, and for a commercially reasonable period after the Closing Date, (i) with respect to the SF Property, to the extent that Transferred Employees occupied any portion of the SF Property prior to Closing, such Transferred Employees shall be permitted to continue to occupy and use the SF Property to the same extent and for the same purposes as the SF Property was occupied by such Transferred Employees prior to the Closing; provided, that the foregoing shall be subject to Purchaser's ability to substitute a substantially similar number of new employees of Purchaser for any such Transferred Employees as provided in Paragraph 18 below, and (ii) with respect to each Sublease Property other than the SF Property, to the extent that Excluded Employees occupied any portion of such Sublease Property prior to Closing, such Excluded Employees shall be permitted to continue to occupy and use such Sublease Property to the same extent and for the same purposes as such Sublease Property was occupied by such Excluded Employees prior to the Closing; provided, that the foregoing shall be subject to Seller's ability to substitute a substantially similar number of new employees of Seller for any such Excluded Employees as provided in Paragraph 18 below. In each case described in clauses (i) and (ii) above, no rent or other payments shall be made to the party which is the tenant under the underlying lease until execution and delivery of the applicable sublease agreement at which time all rent calculated under the sublease agreement for the period from the Commencement Date (which date shall be the Closing Date) through end of the month in which the sublease agreement is executed shall be paid to the Sublandlord contemporaneously with the execution and delivery of the sublease agreement.

(c) If any consent or approval from any landlord under an underlying lease is required pursuant to the terms of the underlying lease in order to effectuate the applicable sublease agreement and/or to the extent that any landlord under an underlying lease has recapture and/or termination rights that would be triggered by the proposed sublease arrangement to be reflected in the applicable sublease agreement, Seller and Purchaser will cooperate and use commercially reasonable efforts in obtaining such consent to the applicable sublease agreement and/or obtaining waivers from the landlord with respect to any such recapture and/or termination rights and shall otherwise comply in all respects with the terms and provisions of the underlying lease in connection with the execution and delivery of the applicable sublease agreement.

18. Deferred Transfers. Notwithstanding anything to the contrary contained in the Agreement, (a) the parties agree that during the nine month period after the Closing Date that Excluded Employees are permitted to occupy and use real property subject to a Transferred Real Property Lease in accordance with Section 8.11(f) of the Agreement, that the Seller and its Affiliates shall also be permitted to substitute a substantially similar number of new employees of Seller or its Affiliates for any such Excluded Employees, and that any such new employees of

Seller or its Affiliates shall be permitted to occupy and use such real property to the same extent and on the same basis as the Excluded Employees in accordance with Section 8.11(f), and (b) the parties agree that during the nine month period after the Closing Date that Transferred Employees are permitted to occupy and use real property is not subject to a Transferred Real Property Lease in accordance with Section 8.11(g) of the Agreement, that the Purchaser and its Affiliates shall also be permitted to substitute a substantially similar number of new employees of Purchaser or its Affiliates for any such Transferred Employees, and that any such new employees of Purchaser or its Affiliates shall be permitted to occupy and use such real property to the same extent and on the same basis as the Transferred Employees in accordance with Section 8.11(g).

19. 745 Seventh Avenue. The parties acknowledge that there is no mortgage encumbering 745's interest in the premises at 745 Seventh Avenue, New York, New York and that, notwithstanding Section 10.1(d) of the Agreement, only the \$500,000,000 promissory note made by 745 in favor of its Affiliate will be fully repaid and extinguished.

1.1 20. Prorations. Notwithstanding Section 12.2 of the Agreement, to the extent that the parties are unable to agree upon all customary prorations for the Purchased Assets as of the Closing, they shall cooperate in finalizing all such prorations within thirty (30) days following the Closing Date.

21. Schedules. Corrected Schedules 1.1(a) and 1.1(b) are attached hereto.

24. Arrangements Regarding DTCC. The parties have agreed to the arrangements with respect to accounts maintained by LBI with DTCC set forth on Exhibit I hereto. [Will provide comments on revised version reflecting agreement in principal when provided]

21. Definition of Contract. Contract shall not include swap agreements.

This letter agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within that state. This letter agreement may be executed in any number of counterparts (including by facsimile), each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

[Remainder of page intentionally left blank.]

Sincerely,

BARCLAYS CAPITAL INC.

By: _____
Name:
Title:

Agreed to and accepted as of the date first written above:

LEHMAN BROTHERS HOLDINGS INC.

By: _____
Name:
Title:

LEHMAN BROTHERS INC.

By: _____
Name:
Title:

LB 745 LLC

By: _____
Name:
Title:

The following is based on an earlier preliminary draft and does not reflect the current agreement in principle; it is included only to facilitate inclusion of the final version.

EXHIBIT I: Liabilities Related to Clearing Securities Trades (DTCC)

(a) Assumed Liabilities shall include Assumed Depository Liabilities and Excluded Liabilities shall include Excluded Depository Liabilities (each as defined below).

(b) On September 19, 2008, Purchaser informed DTCC that, if it is selected as the successful bidder to acquire the Business, Purchaser will guaranty the open trades and amounts due to DTCC on the accounts and subaccounts that were in the draft of DTCC, which roll up into the 0074 Accounts, effective as of the opening of the trading day on Monday, September 21, 2008, in an aggregate net amount not to exceed \$250 million.

(c) Sections 3.2 and 3.3 of the Agreement shall hereby be amended and restated in their entirety as follows:

3.2 Payment of Cash Amount. On the Closing Date, Purchaser shall pay to Seller an amount equal to the Cash Amount, less \$250 million, which shall be paid by wire transfer of immediately available funds into an account designated by Seller.

3.3 Adjustments.

(a) As soon as practicable, Seller shall determine, and notify Purchaser of, the amount of the Excluded Depository Liabilities. On the Business Day following the date on which Seller notifies Purchaser of such amount, Purchaser shall pay to Seller an amount equal to \$250 million, less the Excluded Depository Liabilities, which shall be paid by wire transfer of immediately available funds into an account designated by Seller; provided, however, that, if the Excluded Depository Liabilities equals or exceeds \$250 million, Purchaser shall not be required to pay any amount to Seller pursuant to this Section 3.3(a) [and Purchaser shall be entitled to a credit in the amount of such excess against amounts payable by Purchaser to Seller under the Transition Services Agreement]. The amount of any payment to be made pursuant to this Section 3.3(a) shall bear interest from and including the Closing Date to but excluding the date of payment at a rate per annum equal to the rate of interest published from time-to-time by the *Wall Street Journal* as the "prime rate" at JP Morgan Chase during the period from the Closing Date to the date of payment. Such interest shall be payable at the same time as the payment to which it relates and shall be calculated daily on the basis of a year of three hundred sixty-five (365) days and the actual number of days elapsed.

(b) Promptly following the first anniversary of the Closing Date, Purchaser shall determine with respect to each Position (long or short, including

[†] Can this amount be calculated with certainty? Consider whether dispute resolution provisions are necessary.

repos); that was part of the Purchased Assets and was sold on or prior to such first anniversary, the profit or loss realized from such sale (such profit or loss determined by reference to LBI's mark (book value) for such Position as of the date hereof). Purchaser shall provide reasonable supporting information to Seller with respect to such calculation of profit or loss. If the aggregate amount of all such profits exceeds the aggregate amount of all such losses (i) by up to \$500 million, Purchaser shall promptly pay Seller such net amount; or (ii) by more than \$500 million, Purchaser shall promptly pay Seller the sum of \$500 million plus one-half of the excess of such net amount over \$500 million (but in no event shall Purchaser pay Seller more than \$750 million pursuant to this Section 3.3(b)). For purposes of this Section 3.3(b), the time value of money shall be disregarded and no interest shall be deemed earned.

3.4 Definitions. For purposes of this Article III, the terms set forth below shall have the following definitions:

- (a) "074 Accounts" means [all accounts and subaccounts in the draft of DTCC, prior to the Closing, that roll up into LBI's Account No. 0074.]
- (b) "Assumed Depository Liabilities" means the net amount of all Depository Liabilities incurred in respect of trades made subsequent to the Closing on 074 Accounts that constitute Purchased Assets.
- (c) "Depository Liabilities" means Liabilities of LBIH and its Subsidiaries to DTCC in respect of 074 Accounts.
- (d) "DTCC" means the Depository Trust & Clearing Corporation.
- (e) "Excluded Depository Liabilities" means all net amount of all Depository Liabilities, other than Assumed Depository Liabilities. Excluded Depository Liabilities shall include Depository Liabilities incurred in respect of (A) trades made prior to the Closing on all 074 Accounts and (B) trades made subsequent to the Closing on 074 Accounts that constitute Excluded Assets.

Section 3.2 & 3.3 Escrow Alternative

.....3.2.....Payment-of-Cash-Amount....On the Closing Date, Purchaser shall pay (a) \$250-million of the Cash Amount to the Escrow Agent and (b) the remainder of the Cash Amount to Seller, each of which shall be paid by wire transfer of immediately available funds into an account designated by the Escrow Agent or Seller, as applicable.

.....3.3.....Adjustments:

(a) As soon as practicable, Seller shall determine, and notify the Escrow Agent of, the amount of the Excluded Depositary Liabilities. On the Business Day following the date on which Seller notifies the Escrow Agent of such net amount, the Escrow Agent shall pay, by wire transfer of immediately available funds into an account designated by Seller or Purchaser, as applicable:

- (i) to Purchaser an amount equal to the Excluded Depositary Liabilities; and
- (ii) to Seller the remainder of the Escrow Funds;

provided, however, that, if the Excluded Depositary Liabilities equals or exceeds \$250-million, the Escrow Agent shall pay to Purchaser all \$250-million of Escrow Funds [and Purchaser shall be entitled to a credit in the amount of such excess against amounts payable by Purchaser to Seller under the Transition Services Agreement]. The amount of any payment to be made pursuant to this Section 3.3(a) shall bear interest from and including the Closing Date to but excluding the date of payment at a rate per annum equal to the rate of interest published from time to time by the *Wall Street Journal* as the "prime rate" at J.P. Morgan Chase during the period from the Closing Date to the date of payment. Such interest shall be payable at the same time as the payment to which it relates and shall be calculated daily on the basis of a year of three hundred sixty-five (365) days and the actual number of days elapsed.

(b) Promptly following the first anniversary of the Closing Date, Purchaser shall determine with respect to each Position (long or short, including repos), that was part of the Purchased Assets and was sold on or prior to such first anniversary, the profit or loss realized from such sale (such profit or loss determined by reference to LBL's mark (book value) for such Position as of the date hereof). Purchaser shall provide reasonable supporting information to Seller with respect to such calculation of profit or loss. If the aggregate amount of all such profits exceeds the aggregate amount of all such losses (i) by up to \$500 million, Purchaser shall promptly pay Seller such net amount; or (ii) by more than \$500-million, Purchaser shall promptly pay Seller the sum of \$500-million plus one-half of the excess of such net amount over \$500-million (but in no event shall Purchaser pay Seller more than \$750 million pursuant to this Section 3.3(b)). For

purposes of this Section 3.3(b), the time value of money shall be disregarded and no interest shall be deemed earned.

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Padding cell

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